Supreme Court, U.S.
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No

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2000

Robert Then,
Petitioner
v
State of Maine Department of Human Services,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE MAINE SUPREME JUDICIAL COURT

On Appeal From Maine Supreme Judicial Court sitting as the Law Court

Brief of Petitioner-Intervener Robert Then

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QUESTIONS PRESENTED FOR REVIEW

I. Did the State of Maine Department of Human Services actions impermissibly interfere with the petitioner's federally protected fundamental right to procedural and substantive due process?

II. Did the State of Maine Department of Human Services actions impermissibly interfere with the petitioner's federally protected fundamental right to raise his family?

III. Does the 'clear and convincing evidence' standard adequately protect the fundamental liberties at stake?

LIST OF PARTIES

Christina Then, the mother;

Department of Human Services, State of Maine;

Alice Bradbury, CASA guardian *ad litem* for Breauna with

Kevin Gordon, Esq., who also acted as guardian *ad litem;*

Ray and Judy Doyer, the foster parents/interveners;[1]

Robert Then, the grandfather/intervener;

Gerald Newman, the father.

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[1]Neither the Doyers nor Mr. Neuman participated in the appeal to the Maine Supreme Judicial Court.

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Skinner v. Oklahoma, 316 U.S. 535, 541 (1944)

Stanley v. Illinois, 405 U.S. 645, 651 (1972)

In re Angel B, 659 A.2d 277 (Me. 1995)

In re Guardianship of KLF 608 A.2d 1327 (NJ, 1992)

In re Justin T, 640 A.2d 737 (Me. 1994)

In re Leona T. 609 A.2d 1157 (Me. 1992)

State Youth & Family Services v TC 598 A.2d 899 (NJ, 1991)

Washington Cty Dept. Soc Serv. v Clark 461 A.2d 1077

(MD, 1983)

22 M.R.S.A. § 4035 , 4036, 4041, 4055

OPINIONS BELOW

In this action, the Maine Department of Human Services ("DHS") filed a Petition for Child Protective Order and Order of Preliminary Child Protection[2] on Christina Then (mother and co-petitioner) on behalf of Breauna Newman (date of birth 2/9/95) on 3/12/96 which was granted after hearing on 6/10/96[3]. Robert Then (maternal grandfather) was granted intervener status in October 1996. As required by law, reviews occurred in October 1996, February 1997, March 1997 resulting in the entry of agreed orders continuing custody of Breauna with DHS. On review in July 1997, the parties were unable to agree. Mr. and Mrs. Doyer (foster parents) were granted intervener status when the matter came to trial in January 1998. The matter was continued for reasons set out below. The contested hearing on the judicial review and a Petition for Termination of Parental Rights dated 8/3/98 came to trial on 9/2/98 and 11/2-3/98. The trial

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[2]Appendix E

[3]Appendix D

court's Order of Termination was entered on 12/22/98[4]. Robert filed a timely Motion to Reconsider and Christina filed a timely Notice of Appeal. The Motion to Reconsider was heard on 2/16/99 and the court denied the motion without findings on 2/19 but did not promulgate it to the parties until late May 1999. Because of this oversight by the court, Robert's Notice of Appeal was not filed until 6/2/99 but was joined with the appeal of Christina Then by Order of the Law Court. Without argument, the Maine Supreme Judicial Court affirmed the trial court on 12/20/99[5].

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

RELEVANT STATUTES

The 14th Amendment to the U.S. Constitution Amendment, which states "No person shall...be deprived of life, liberty or property without due process of law" applies in this case.

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[4]Appendix B

[5]Appendix A

The applicable state statutes are 22 M.R.S.A. § 4055 relative to termination of parental rights, 22 M.R.S.A. § 4035 and §4036 relative to continued jeopardy, and 22 M.R.S.A. § 4041 relative to rehabilitation and reunification and are fully set forth in Appendix F. The statute existing at the time the case was initiated (1996) controls even though there have been some intervening changes in the statutory language.

Petitioner Robert Then prays that a Writ of Certiorari issue to review the judgment of the Maine Supreme Judicial Court *in re Breauna* 742 A 2nd 911 (Me. 1999)[6] affirming the termination order of the Maine District Court. Pursuant to Supreme Court Rule 28(c), the Petitioner reports that the constitutionality of a statute or a state constitution is not in dispute and no such issues have been certified to a State Attorney General.

STATEMENT OF THE CASE

Petitioner Robert Then (dob 12/3/48) was employed

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[6]Appendix A

by the U.S. Air Force for 29 years, retiring in late 1997. He was married to Co-Petitioner Christina Then 's mother for about 7 years before they divorced when Christina was quite young. Currently, he has been married to Keri Then for 9 years and lives in Marina Valley, CA.

Co-petitioner Christina Then (dob 7/18/79) lived with her mother until age 3 and then with her father until age 14. At that time, rebellious, she ran away twice, meeting Gerald Newman. Robert sent Christina to her mother in Maine hoping Christina would settle down, but when Christina discovered she was pregnant (by Gerald), her mother refused to allow her to stay.

Breauna (dob 2/9/95) was born in Maine when Christina was 15. Robert came to Maine for a week to get the new mother and her baby settled before returning to his station in Italy. Christina remained in Portland receiving financial support from her father and services provided by YWCA, DHS and Casey Family Services. Breauna, a passive baby, had medical conditions making care difficult even for a

mature and experienced parent[7]. Christina never told her father that she was having such difficulty, because she wanted to prove herself. She sought appropriate regular medical care but despite her efforts, Breauna's infections continued, she failed to gain weight and was taken into DHS custody and placed with the Doyers on 3/7/96, where she has lived ever since. Christina tried to stay in Portland but finally joined Robert in Aviano, Italy.

Breauna's infections and difficulty feeding continued. In her first 6 weeks with the Doyers, she gained only 6 ounces, and continues to this day to be a slight and frail child, although she made substantial gains as she matured.[8]

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[7]Breauna was born with a hole in her heart (ventricular septal defect) and suffered from multiple and recurrent infections of her ears, urinary tract and upper respiratory system. She also had difficulties feeding, refusing to eat and vomiting after eating.

[8]While Breauna had health problems, Christina took her for her pediatrician and specialist appointments. There was, in fact, an organic component to Breauna's failure to thrive, as Ms. Doyer stated at the trial, a "roller coaster of medical needs . . . fighting one infection after another from her entry into foster care." After a full year in foster care under Ms. Doyer's experienced care, Breauna's weight went from the 5th percentile to the 10th percentile, and only after surgery did Breauna make significant gains. Robert asserted that the past difficulties were now resolved: Both Breauna and Christina have matured considerably, and Robert is fully attuned to Breauna's special needs which are

(continued...)

When Breauna was taken into DHS custody Robert quickly made all arrangements to have Christina and Breauna live with him permanently. Retired from the Air Force he moved with Christina, his wife and her daughter to her new assignment in Germany. Robert explored base services in Italy and Germany to provide information about available services and treatment plans for Breauna to DHS. He worked full time as a civilian. Both Christina and Robert believe he could provide a well for Breauna. Robert was evaluated at DHS's insistence, and came to Maine[9] when possible to spend time with Breauna. At first, visits were open and relationships with DHS were reasonably cordial, but despite Robert's sustained and sincere efforts, DHS was at all times unenthusiastic about his participation. Later, DHS incomprehensibly required his visits with Breauna be supervised and his relationship with DHS deteriorated.

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[8](...continued)
now relatively minor periodic me3dical check-ups.

[9]Robert visited Breauna in October 1996, April 1997, August 1997, January 1998, February-March 1998

After reluctantly agreeing to a home study, in September 1996, DHS refused to act letting the study request languish until July 1997, implausibly blaming "paperwork." Robert had immediately given DHS all the information to contact the home study agency in Germany. When DHS finally initiated the study almost a year later, it was quickly performed by the same agency identified by Robert the year before.[10] As a result of the pattern of delays and obstructions, Robert became convinced that DHS opposed reunification.

In January 1998, Robert, Christina and Keri came from Germany, at their own expense, to spend the week visiting Breauna and attending the scheduled trial. At the outset, the trial court made a proposal that all parties felt pressured to accept, which called for a novel "intensive reunification plan" created and monitored by a mental health professional that would result in the reunification of Breauna with Robert.

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[10] The home study was favorable to Robert.

The reunification plan could not be created and implemented immediately. The Thens had planned to go to Germany at the end of the week, and return to the U.S. on 2/25/98 to begin the "intensive reunification program." During the remaining days of the January trip, supervised visits were authorized, with great difficulty and reluctance on the part of DHS, for 2 hours at the beginning of the week and an hour at the end of the week. Faced with mounting costs, the Thens reluctantly returned to Germany early, rather than wait 4 days for a one hour supervised visit. Before leaving the U.S., Robert was very clear with all parties that he would have only 30 days to remain here before he was required, by rules imposed on him as his wife's military defendant, to return to Germany.

During mid-February 1998[11], the outline of the "intensive reunification plan" was developed by DHS and Spurwink Clinic staff: 2 hours of supervised videotaped visits

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[11]Ms. Payson seemed to have great difficulty remembering what had happened over the course of this case when she testified on November 2, 1998.

between Robert and Breauna twice a week for several weeks. DHS did not seek input from the guardian, Robert, Christina or their attorneys but presented the plan to Mrs. Doyer on or before 2/20/98. The plan, which did not acknowledge Robert's 30 day time limit, was not disclosed to counsel for Robert until 2/24/98 while Robert was en route from Germany. DHS's plan did not comply with the Court's order to develop an "intensive reunification plan", but was, in fact, a plan to analyze what might be needed to implement reunification at some later date.

Spurwink staff, DHS and the parties[12] met as previously scheduled on 2/25/98 and after a contentious meeting, revised the proposed plan in order to make some meaningful attempt to allow reasonable contact between Robert and Breauna during his one month stay. It became apparent that the parties had different visions of the plan and

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[12]Rosemary Merrill, having been appointed guardian ad litem in 1996, had filed a Motion to Withdraw as she had accepted new employment. The new guardians Alice Bradbury and Kevin Gordon were appointed in March 1998. None of the guardians attended the DHS-Spurwink meetings.

in the end, a hybrid of the various visions of the plan was partially implemented to no one's satisfaction. Spurwink, well aware that Robert had only 30 days, expected Robert to circumvent the Air Force rules and stay longer.

Although the revised "reunification plan" was ultimately unworkable, Robert attended faithfully it for the remaining 29 days, meeting with Spurwink and providing videotapes of his interactions with Breauna which were, thereafter, never used.[13] He visited with Breauna at every opportunity and their relationship flourished, but financially and emotionally drained at the end of his 30 days, Robert left Maine on 3/25/98, as previously scheduled.

Robert, Keri, Elizabeth and Christina remained in Germany until July 1998 when Keri retired. The civilian Thens returned to California with dwindling hope that reunification

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[13]It is important to note that neither the new guardian nor the Spurwink team doing the second developmental evaluation of Breauna on 9/22/98 even looked at the videotapes demonstrating Robert and Breauna's relationship.

might still be possible.[14] When this matter finally came to trial, Robert was in the midst of his transfer from Germany to California. Little trusting either the court or DHS to accord him any small amount of the respect he deserved after a lifetime of dedicated service to the U.S., he had neither the financial nor emotional resources for another abortive trip to Maine and did not personally attend the termination hearing.

At trial Christina and Robert (through counsel) asserted that DHS failed to work in good faith toward reunification interfering with reunification efforts and that Christina's original placement plan with Robert was satisfactory, safe, and appropriate. Robert asserted that he understood Breauna's needs, and that he had the desire, ability and resources to provide a safe home for Breauna.

ARGUMENT

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[14] When it became evident that DHS was inalterably opposed to working with Robert, Christina renewed her request that Breauna be placed directly with her, moving to Maine in August 1998. Between the first day of trial (9/3/98) and the continuation of the trial in November 1998, Christina and Breauna underwent yet another assessment by Spurwink. Although there were many fruitless efforts, it was only after the final day of trial that a visitation schedule was set up that remains more or less in effect today.

I. DHS violated Christina and Robert's fundamental constitutional rights

A. The Constitution protects family integrity

The U.S. Supreme Court has long recognized a fundamental, substantive right to make decisions regarding procreation[15], calling the right to procreate "one of the basic civil rights of man."[16] Furthermore, the court identified the right "to establish a home and bring up children" as a constitutionally protected liberty[17]. This Court declared an unwed father's rights to a hearing on fitness when the custody of his child is challenged, saying:

> "[t]he private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection." *Stanley v. Illinois* 405 U.S. 645, 651 (1972).

In *Prince v. Massachusetts*, this Court stated "[I]t is

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[15] *Roe v Wade* 410 U.S. 11 (1973); *Griswold v Connecticut* 318 U.S. 479 (1965)

[16] *Skinner v Oklahoma* 316 U.S., 535 (1944).

[17] *Meyer v Nebraska* 262 U.S. 390 (1923)

cardinal with us that the custody, care and nurture of the child reside first in the parents" 321 U.S. 158 (1944). The Court has limited the extent to which state intrusion is allowed:

> "The fundamental liberty interest of natural parents in the care, custody and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than to those resisting state intervention into ongoing family affairs"
> *Santosky v. Kramer* 455 U.S. 745, 753 (1982).

And further:

> "Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence."
> *Santosky* at 747.

While grandparents' rights do not and should not supercede rights of parents, the protections and benefits the Court has extended to parents and children must extend, barely attenuated, to grandparents and grandchildren. Thus Robert, as the grandfather/intervener, had both intrinsic

human rights as a family member and a legally recognized role in the court proceedings.[18] He was thus entitled to diligent efforts by the State to reunification of his family and he was entitled to due process before his liberty interest in preserving and protecting his family was abridged by the state.

B. The state's power must be tempered by correct and fair process

> "[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Matthews v Eldridge 424 U.S. 319, 335 (1976)*

> "In parental rights termination proceedings. The private interest affected is commanding; the risk of error from using a preponderance standard is substantial; and the countervailing governmental interest favoring that standard is slight."
> *Santosky* at 758

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[18]See Smith v Organization of Foster families 431 U.S. 816, 842-847 (1976)

DHS has an obligation to oversee families and, where truly necessary to protect children from harm, intrude on the day-to-day life of the family. The State's authority is limited by statute, oversight from the court, and the Bill of Rights. DHS removal of a child from loving but less than perfect parents must be backed by a lawful court order, good faith reunification effort as well as hearing and review, where parents may be entitled to court appointed counsel. This guarantees that removal occurs only to protect a child from immediate harm and that return occurs as soon as safety can be reasonably certain.

C. The powers and responsibilities of DHS are analogous to those of the police.

The exercise of the State's power to remove children from families is lawful only when the State gives the family prompt and meaningful opportunity to reunify. The State's authority to remove children is like the authority to make arrests. As police seizure of a citizen must be subject intense review by the court, DHS seizure of the citizen's child,

imperiling the liberty not only of the citizen but of his family, must similarly be subject to examination by the court.[19] When the police unreasonably detain a citizen, the remedy must be the citizen's release. Unreasonably delay in reunification efforts cannot be condoned by saying the child is bonded to the foster home and cannot therefore be returned to her family. In this case, as in cases involving police misconduct, it is insufficient to say that remedy for unfair pre-trial treatment by the State is given by providing a fair trial afterwards. Although late in the process, the child may still be released from DHS custody and the family reunified.

D. DHS violated the family's right to due process

Termination of the family members' liberty, privacy, and security rights to each other can only be permitted when the panoply of rights to which the family is entitled by the Constitution is scrupulously protected. In Breauna's case, Robert's due process rights were obviously and significantly

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[19] *Gerstein v Pugh* 420 U.S. 103 (1975)

denied when essential steps toward reunification were repeatedly delayed or impeded by DHS and his family irrevocably divided. In her concurrence Justice Saufley sets this out:

> "I write separately, however, to address the egregious delays that occurred during this troubling process. The system failed this little girl and her family. Because of this failure, Breauna will be deprived of a life with the family that wanted her. This simply should not have occurred."

And further:

> "In termination of parental rights cases, the time frame must be "measured from the child's perspective." *In re Leona T.*, 609 A.2d 1157, 1159 (Me. 1992). A one-year delay can be a lifetime from an infant's perspective. In this case, two years passed between the time the Department took Breauna into its care and the implementation of the intensive reunification plan. No child or family should have to wait that long simply because of a process that is "a lot of paperwork...a lot of shuffling."

The delay created by DHS is a due process violation of such magnitude that this Court cannot condone it simply by saying that Breauna is now attached to her foster home[20].

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[20]Various jurisdictions, although apparently not Maine, have asserted that the mere fact of bonding with the foster parents is insufficient reason to

(continued...)

The trial court and the Supreme Judicial Court erred in supporting DHS's violation of the parties' Constitutionally guaranteed privacy rights of family. These errors rise to the level of an important Federal question because the issue effects fundamental rights of many families similarly situated in Maine and other jurisdictions.

II. DHS impermissibly interfered with the petitioner's right to raise his family

A. Reunification is a Constitutionally protected right

The right to make decisions about, sex, marriage, child-bearing, child-rearing, a child's religious education and similar issues within the family is highly protected by this Court. Similarly, the decision to participate in reunification and the nature of the reunification program must fall within the privacy afforded to the individual by the Bill of Rights.

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[20](...continued)
terminate parental rights. For example: State Div of Youth and Family Services v TC 598 A.2d 899 (NJ, 1991); In re guardianship of KLF 608 A.2d 1327 (NJ, 1992); Washington County Dept. Social Services v Clark 461 A.2d 1077 (MD. 1983)

Because of the protections extended to the family and decisions made within the family, This Court must view the right to reunification as falling within the scope of the protections afforded the fundamental rights. Robert, despite frustration with the incomprehensible delays in process, has been extremely faithful to showing that he has the resources to care for Breauna. This goes well beyond the hopeful optimism often seen in child protective cases. Christina's alternative plan should not have been discounted. Requesting a grandparent to raise a child can be an appropriate allocation of parental responsibilities so a parent may attain education, maturation, financial or emotional independence sufficient to resume parental responsibility. Christina properly sought out her father as a valuable resource. This was her fundamental right and Roberts fundamental right to choose to participate in Breauna's upbringing.

DHS obstructed Robert's legitimate efforts and statutory and Constitutional rights to reunify with his

granddaughter and failed to work in good faith toward meaningful reunification by unconscionably delaying the home study, by restricting visits[21], by discounting the value of the relationship between Robert and Christina and numerous other chips at this family's protected liberty interests. DHS never asserted that visits were detrimental to Breauna, or that she was harmed by Robert and Christina's alignment, demonstrating no compelling interest in the issue. Unilateral action by DHS resulted in the desired effect: visits were less frequent and shorter.

The "intensive reunification plan" ordered by the Court over DHS's strenuous objection was never developed. DHS commissioned a protocol in mid-February that could be and was used to impede reunification. Had DHS shared the protocol with all the parties before 2/24/98, the plan would have been successfully modified prior to Robert's arrival in Maine. DHS knew this and deliberately and unconscionably

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[21]Without explanation, **after** the long delayed home study recommended Robert's home as a placement for Breauna, DHS required all visits be supervised.

concealed both the mid-February Spurwink/DHS meeting and the plan itself from Robert, forcing him to exhaust his reserves of time, emotion, money and energy in his longstanding effort to provide for Breauna, in the face of DHS resistance.

DHS failed this family. Robert has, as set out above, worked exhaustively to prove to an obdurate DHS that he had all the financial, professional, emotional and experiential resources needed to assume full time care for Breauna.

B. DHS failed to comply with its statutory obligation to reunify and rehabilitate the family

DHS has an absolute mandate to work in good faith toward reunification.[22] DHS's incomprehensible requirement that visits be supervised, rejection of proffered supervisors without explanation and refusal to develop a reasonable visitation plan even as the case was in trial profoundly interfered with Robert and Christina's ability to interact with Breauna, as DHS planned, guaranteeing that the visits would

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[22] 22 M.R.S.A. § 4041 (3).

be less frequent and shorter, with one agonizing and unwarranted delay after another.

DHS ultimately created the need for the panoply of support services necessary to raise Breauna at considerable expense to the State and great cost and loss to Breauna. Robert would gladly have provided all these services. It is tragic that DHS's delay of this case resulted in the establishment of the relationship between Breauna and her foster family now used by DHS to prevent reunification and terminate parental rights. DHS has been repeated warned against using this tactic[23]. If this Court affirms the termination order based on the fact that Breauna established a relationship with her foster family, it can only be by overlooking the very substantial and important constitutional protections afforded the biological families. Nothing could ever compensate for a child's loss of her family.

DHS claimed that Breauna is best off with the Doyers

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[23] *In re Justin T* 640 A.2d 737 (1994)

because she has made substantial gains. In part, that is the purpose of foster care, to provide a needy child (or an overwhelmed parent) with respite until the biological family can resume responsibility. While Breauna has made good strides while in foster care, she would have made those gains in the care of her grandfather, and perhaps more[24].

III. The "clear and convincing" standard is inadequate

Under Maine law, the court is required to make two separate, sequential findings of fact before interfering with the liberty interests of a parent by terminating parental rights.

> "The Court must find parental unfitness according to one of four statutory factors **before** determining whether termination is in the best interests of the child." *In re Angel B*, 659 A.2d. 277, 278 (Me. 1995). (emphasis added).

> "Notwithstanding the order set forth in [22 M.R.S.A.] §4055, it is only **after** the State has met its burden relative to one of the four prongs involving parental unfitness that the best interest of the child are considered."*In re Leona T.* 609 A.2d 1157 (Me. 1992) (emphasis added)

To prevail on its Petition for Termination, DHS must prove

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[24]For example, the Doyers have refused to provide play therapy recommended by the various evaluations.

allegations in the Petition by clear and convincing evidence.[25]

> "When clear and convincing evidence is required, we review whether the fact finder could reasonably have been persuaded that the required factual findings were proved to be highly probable." *In re Justin T.* 640 A.2d 737, 738 (Me. 1994).

The State has a heavy burden of proof when presenting evidence regarding Breauna's future best interests. The future is always uncertain. The Doyers are older than the Thens. Breauna might flourish with them for many years or for a variety of circumstances beyond prediction, be moved to another foster home next week. Even the State's experts cannot offer more than a guess that Breauna will do better with the Doyers than with the Thens.

Because fundamental rights can be infringed only if there is a **compelling** state interest, the clear and convincing standard is inadequate to the task of evaluating the compelling interest, the propriety of removal and the effectiveness of reunification.

. Regarding adoption, this Court cannot accept a

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[25]22 M.R.S.A.§ 4055(I)(2)(b)(ii)(iv)

position that termination is in a child's best interest simply because there is a potential available adoption placement. This Court should be aware that only a fraction of Maine's children available for adoption last year were actually placed in adoption or pre-adoption homes. The transition from foster child to adoption is rarely smooth. Breauna's future with the Doyers is not guaranteed, and, in reality, is considerably less certain than her future with her own family.

The loss of a child through DHS action is akin to a death sentence for the biological family. Forever deprived of the comfort and companionship of that child, a permanent void remains for the family. A family's constitutional rights to integrity and liberty deserve this Court's protection.

CONCLUSION

DHS seeks to impermissibly deny Robert Then his constitutional right to be a grandparent to Breauna Newman by failing to work in good faith to reunify the family. The Clear and convincing standard is not sufficiently high for such a major interference by the State on the family's protected

liberties. A Writ of Certiorari should issue to review the judgment of the Maine Supreme Judicial Court. The trial court's ruling should be vacated and Breauna should be gradually, but promptly, returned to the love and care of her family.

Respectfully submitted this 16th day of March 2000.

Caroline J. Gardiner

Caroline J. Gardiner
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Maine Bar # 6864

APPENDIX A

MAINE SUPREME JUDICIAL COURT Reporter of Decisions
Decision: 1999 ME 191
Docket: Cum-99-55
Submitted on Briefs: October 14, 1999
Decided: December 20, 1999
Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY, ALEXANDER, and CALKINS, JJ.
Majority: WATHEN, C.J., and CLIFFORD, RUDMAN, and ALEXANDER, JJ. Concurring: DANA, SAUFLEY, and CALKINS, JJ.

IN RE BREAUNA N.

RUDMAN, J.

[¶1] Breauna's mother and her grandfather appeal from an order entered by the District Court (Portland, Bradley, J.) terminating the mother's parental rights pursuant to 22 M.R.S.A. §§ 4055(B)(2)(a),4055(B)(2)(b)(i), and 4055(B)(2)(b)(ii) (1992 & Supp. 1998). They argue that the court erred when it found by clear and convincing evidence: (1) that the mother was unwilling and unable to take responsibility for and protect Breauna from jeopardy in a time reasonably calculated to meet Breauna's needs; and (2) that the termination of her parental rights was in Breauna's best interest. The mother further asserts that the court erred when it denied her motion to reinstate the Department of Human Services' (DHS) obligation to reunify her with Breauna. The mother and the grandfather also contend that the court erroneously determined (1)

that DHS made a good faith attempt to reunify Breauna with her mother and grandfather; and (2) that equitable estoppel did not preclude a finding that the mother made insufficient efforts to reunify with Breauna. Finally, the grandfather argues that the court exceeded the bounds of its discretion when it excluded his letter from evidence. We disagree and affirm.

I. FACTS

[¶2] Based upon the unified record, the trial court could have found the following: The fifteen-year-old mother delivered Breauna on February 9, 1995. Breauna's grandfather traveled to Maine from the U.S. Air Force Base in Aviano, Italy to help his daughter for a week. After the grandfather returned to Italy, he sent money and necessities for Breauna. As an infant, Breauna had numerous medical problems. Breauna was born with a ventricular septal defect in her heart; she also had multiple ear and urinary tract infections. Her mother repeatedly sought medical help for the child, but the child's illnesses persisted. Between November 1995 and February 1996, Casey Family Services, which provided intensive in-home treatment, a public health nurse, and a day care center assisted the mother in caring for Breauna.

[¶3] When DHS first petitioned for a Child Protection Order (CPO), it argued that the mother jeopardized Breauna's health and welfare. At thirteen months old, Breauna only weighed fifteen pounds, four ounces. DHS did not initially seek custody of Breauna. Rather, DHS referred the mother and Breauna to the Spurwink Clinic for comprehensive psychological and medical evaluations. A Spurwink doctor diagnosed Breauna's condition as non-organic failure to thrive due to environmental conditions.

[¶4] After the Spurwink evaluations, DHS sought a preliminary CPO. The court awarded DHS temporary custody of Breauna because her mother needed extensive parenting training and assistance. DHS placed Breauna with a foster family and the mother moved to Aviano, Italy with her family.

[¶5] At the final CPO hearing, the court (Portland, Beaudoin, J.) found by a preponderance that Breauna was in jeopardy because she suffered from non-organic failure to thrive. The mother did not sufficiently feed, nurture or interact with Breauna. The court concluded that Breauna was in an immediate risk of serious harm due to caloric deprivation, a condition that could result in permanent brain damage and serious developmental delays.

A. Reunification Efforts With Breauna's Grandfather

[¶6] In October 1996, the court (Portland, Goranites, J.) granted Breauna's maternal grandfather limited intervenor status pursuant to 22 M.R.S.A. § 4005-B (1992). In March 1997, the court (Portland, Foster, J.) ordered DHS to reunify Breauna with her grandfather overseas. The first step in reunifying Breauna with her grandfather was a home study. The home study was delayed by over a year. The grandfather and his family were living on the U.S. Air Force Base in Germany. The grandfather recommended a person to complete the home study in Germany to DHS, but DHS declined his suggestion. About a year later, DHS hired the same person to complete the home study that the grandfather had identified. This delay adversely affected the grandfather's reunification with Breauna because DHS credited Breauna's attachment to her foster family during that year as a reason for maintaining her foster care.

[¶7] The court ordered the grandfather to temporarily relocate to Portland to begin an intensive reunification with Breauna. Breauna's placement with her grandfather and his wife was

contingent upon her successful transition to them. When the court ordered reunification with the grandfather, it simultaneously relieved DHS of its obligation to reunify Breauna with her parents.

[¶8] Spurwink recommended that the reunification plan exclude the mother because it feared that the grandfather would give her physical custody of Breauna. Rosemary Merrill, Breauna's guardian ad litem (GAL) until March 1998, was concerned that Spurwink had based its recommendation on misinformation because the grandfather and his wife were "adamant" that they &shyp; not the mother &shyp; would be Breauna's primary caretakers. Ms. Merrill thought the misinformation influenced Spurwink's final recommendation.

[¶9] In February 1998, the intensive reunification of the grandfather and Breauna began. Spurwink Clinic designed and executed the reunification plan. Before the intensive reunification plan was established, the grandfather informed DHS and Spurwink that he could only remain in Maine for thirty days because Air Force rules prohibited him from living off base for more than thirty days.{1}

[¶10] Spurwink's plan allowed the grandfather to visit

Breauna under supervision for two hours, twice a week. The record shows that this plan was not a traditional intensive reunification plan. The plan should have consisted of at least four visits a week building towards daily visits. Although Spurwink knew the grandfather only had thirty days in the United States, its reunification plan required sixty days. The grandfather returned to Germany less than thirty days into the reunification program.

[¶11] The grandfather can no longer be considered a reasonable alternative for custody. He has not returned to Maine since he left in March 1998 and he has not attended any of the termination hearings. At the termination hearing, the grandfather's attorney offered a letter from the grandfather. The attorney offered the letter during the examination of the mother under M. R. Evid. 801(d)(2), but the court excluded the letter because it did not fall within any hearsay exception.

B. Efforts of the Mother

[¶12] While in Germany, the mother received her general education diploma. She took college courses and worked at a steady job. She also completed a parenting course at the military base. The mother decided, in Spring 1998, to begin the process of

reunifying with Breauna. The mother arrived in Portland in August 1998. She obtained a full-time job and an apartment. At the time of the termination hearing, the mother was attending parenting classes and counselling at the YMCA.

[¶13] The GAL commended the mother for the progress that she had made: "She appears to be a totally different person than the person described in the reports from when Breauna first came into care." The mother is "articulate, reasonably mature, somewhat naïve and intelligent." A doctor at Spurwink, however, described the mother as a rigid and defensive person. She does not suffer from any personality disorders.

[¶14] The GAL questioned the mother's commitment to rearing Breauna because the mother had minimal contact with her. While living in Europe, the mother visited Breauna in July and October 1996, when she saw her child three times; in April and August 1997, when she visited Breauna almost daily between April 5, and April 12; and in January 1998. The court held the first day of the termination hearing in September 1998 and the next two days of the hearing in November 1998. Between the September and November termination hearings, the mother only visited Breauna

twice. Although the mother left about twenty-five messages for the foster mother to set up visits with Breauna between September and November 1998, the foster mother failed to return her calls.

[¶15] The mother testified that she was not ready to assume custody of Breauna. She could not estimate when she would be ready. She also acknowledged that Breauna received excellent care from her foster mother.

C. Breauna

[¶16] Breauna has lived with the same foster family since DHS took custody. Her foster parents provide an excellent home life where Breauna is flourishing. Breauna calls her foster mother "Mom." Breauna, now four and a half years old, has spent two-thirds of her life with this family that hopes to adopt her.

[¶17] When DHS placed Breauna with her foster family, Breauna suffered from serious medical conditions. Her health has stabilized, but her social, perceptual and motor skill developments are still delayed. She wears orthotics for support in her shoes and attends occupational therapy.

[¶18] Breauna is emotionally fragile. Breauna's most significant attachment is to her foster mother. Both the Spurwink

team and the GAL testified that separating Breauna from her foster family would be detrimental to her developmentally, socially and emotionally. If the mother were to reunify with Breauna, it would be a long and arduous process that would require continuous monitoring and support.

II. DISCUSSION

A. Sufficiency of the Evidence

[¶19] Contrary to the mother's contentions, sufficient evidence exists on the record to support the court's factual findings by clear and convincing evidence. When reviewing sufficiency challenges for clear and convincing evidence, we examine whether the trial court "could have reasonably been persuaded on the basis of evidence in the record that the required factual findings were 'highly probable'" *In re Denise M.*, 670 A.2d 390, 393 (Me. 1996). {2} The record supports the finding that the mother was unable and unwilling to take responsibility for and protect Breauna from jeopardy within a time reasonably calculated to meet her needs. {3} When determining a parent's willingness and ability to take responsibility for and protect her child, we measure time from the child's perspective. See *In re Alexander D.*, 1998 ME 207, ¶ 18,

716 A.2d 222, 228. Breauna has been in DHS custody for over three years, yet her mother, by her own admission, is still not ready to take custody of Breauna and cannot estimate when she will be ready to take custody. The mother has maintained minimal contact with Breauna. During the three years that Breauna has been in DHS custody, the mother has visited Breauna sporadically.

[¶20] Clear and convincing evidence also establishes that termination was in Breauna's best interest. See *In re Denise*, 670 A.2d at 393. Breauna is thriving in her foster home. She has developed a strong emotional bond with her foster mother. Removing Breauna from the stable environment of her foster family would damage her social, emotional and physical development. By her own admission, Breauna's mother is not ready to care for Breauna in the manner that Breauna requires. Breauna has spent over three years of her young life living with her foster family while seeing her biological family about twice a year. Breauna needs stability in her life and, therefore, it is in her best interest to remain with her foster family where she has that stability. The foregoing facts support the District Court's findings by clear and convincing

evidence.

B. Good Faith Effort to Reunify

[¶21] The mother and the grandfather also assert that DHS failed to execute its statutory obligation of making a good faith effort to reunify Breauna with her biological family. See 22 M.R.S.A. § 4041 (1996 & Supp. 1998). We disagree. The evidence in the record establishes by a preponderance that DHS acted in good faith. See *In re Denise*, 670 A.2d at 394 (opining that good faith action by DHS must be proved by a preponderance of the evidence). Before DHS petitioned to remove Breauna from her mother's custody, the mother had the assistance of Casey Family Services, a day care center, and a public health nurse. When DHS took custody of Breauna, the mother moved to Europe. The mother was not available to undergo the extensive parenting instruction that she needed to safely care for Breauna. DHS attempted to reunify Breauna with her grandfather, but the reunification effort failed.

[¶22] In *In re Denise*, we opined that DHS satisfied its statutory obligation because it spent two years trying to help the parents learn parenting skills, even though DHS failed to disclose that one of its counselor's who recommended termination also

wanted to adopt the child. See *In re Denise*, 670 A.2d at 393-94. Similar to the circumstances in *In re Denise*, DHS spent over three years trying to reunify Breauna with her family. See id. DHS did not address this matter as efficiently as it should have, but DHS did not cause the mother to move to Europe and live a great distance from her daughter. DHS did not cause the grandfather to leave the intensive reunification early. Thus, DHS's efforts to establish and implement a reunification program support the finding that DHS engaged in a good faith reunification effort. See *In re Denise*, 670 A.2d at 394.

C. Equitable Estoppel

[¶23] The mother asserts that the doctrine of equitable estoppel bars DHS from using her failure to reunify with Breauna as evidence that termination is in Breauna's best interests. Equitable estoppel only applies when a party relies to her detriment on another party's misleading conduct. See *Anderson v. Comm'r of Dep't of Human Servs.*, 489 A.2d 1094, 1099 (Me. 1985). When the Court relieved DHS of its obligation to reunify the mother with Breauna, the mother knew that the reunification of Breauna and her grandfather was contingent upon the successful completion of the

intensive program. When reunification with the grandfather failed, the mother allowed four months to pass before she commenced efforts to reunify with her daughter. DHS did not engage in misleading conduct that would induce the mother to rely to her detriment and, thus, the doctrine of equitable estoppel does not apply.

D. Grandfather's Letter

[¶24] The grandfather contends that the court exceeded the bounds of its discretion when it excluded his letter from evidence at the termination hearing. See *Kay v. Hanover Ins. Co.*, 677 A.2d 556, 558 (Me. 1996) (opining that the court applies clear error and abuse of discretion to the trial court's evidentiary rulings). The grandfather's attorney offered a letter written by the grandfather &shyp; a party who was not present at the hearing &shyp; during examination of the mother. The grandfather argues that the letter was not hearsay because he offered the letter under M. R. Evid. 801(d)(2).{4} M. R. Evid. 801(d)(2) only applies to statements offered against a party-opponent. M.R. Evid. 801(d)(2). The grandfather's letter was not offered by a party-opponent. He offered his own letter. The court, therefore, properly excluded the letter.

The entry is:

Judgment affirmed.

SAUFLEY, J., with whom, DANA and CALKINS, JJ., join, concurring.

[¶25] I concur with the result in this case because the District Court's findings are supported in the record, see In re Denise M., 670 A.2d 390, 393 (Me. 1996), because it is clear that Breauna has developed an attachment to her foster family which if broken, would actually cause her harm, see *In re Ashley A.*, 679 A.2d 86, 89 (Me. 1996), and because Breauna's mother unfortunately delayed too long in getting her own life together sufficiently to provide a safe home for Breauna, see *In re Serena C.*,650 A.2d 1343, 1344-45 (Me. 1994).

[¶26] I write separately, however, to address the egregious delays that occurred during this troubling process. The system failed this little girl and her family. Because of this failure, Breauna will be deprived of a life with the family that wanted her. This simply should not have occurred.

[¶27] In order to understand my concerns, a more detailed

history of the process is necessary. In the midst of a troubled adolescence, Breauna's mother left home when she was fourteen years old. On February 9, 1995, at the age of fifteen, she gave birth to Breauna, a child with multiple health problems. She lived briefly with the child's father. Her own father, a serviceman then stationed in Italy, flew to Maine to be with his daughter after she gave birth and later suggested that his daughter and Breauna come back to live with him. She declined his invitation. Breauna's health failed during her first year of life, and the Department took custody from the overwhelmed teenage mother in March of 1996, just a few weeks after Breauna's first birthday. There is little doubt that the Department's initial action in taking Breauna into its care was both necessary and appropriate.

[¶28] Breauna's grandfather, who had already demonstrated his concern for his granddaughter by coming personally to Maine at the time of her birth and by supporting his daughter financially, made his interest known to the Department immediately after Breauna was placed in the Department's custody and offered to take custody from the Department. He filed a formal motion to intervene in April

of 1996 and participated consistently, either personally or through counsel, in the proceedings. By September of 1996, the guardian ad *litem had gathered a significant* amount of information regarding Breauna's grandfather and recommended that the court consider transferring responsibility for Breauna to her grandfather.

[¶29] Department policy apparently requires that a home study be performed to gather the information necessary for the Department and the court to make an informed determination about the appropriateness of a placement with a relative. The Department therefore required the grandfather to submit to a home study of his new residence in Germany. To this end, the grandfather researched the matter and quickly located an individual qualified to perform the DHS mandated home study.

[¶30] The Department was apparently unwilling or unable to expeditiously confirm the credentials of the person suggested for the job by the grandfather, and instead chose to search independently for a professional to perform the study. Without any clear reason, it took the Department one full year merely to begin the process of the home study by locating a suitable person. Ironically, the person chosen was the person suggested by the grandfather a year

previously. The reason for the year long delay is never made clear in the record. To her credit, the caseworker testified straight forwardly that "It's a very lengthy process. It's a lot of paperwork. It's a lot of shuffling. And there is no other excuse, other than it's a long, lengthy process."

[¶31] That "long, lengthy process" resulted in the passage of a full year in Breauna's life without movement toward a placement with her family.{5} Even after the completion of the home study, quite favorable to the grandfather, the Department took no action to move toward a family placement. As the guardian ad litem stated in a report dated September 16, 1997:

> [I]t does appear that we have placed [the grandparents] in an extremely difficult position by delaying the Home Study and then penalizing them for that delay by using Breauna's attachment to [her foster mother] as one of the reasons for maintaining the foster placement for one year.{6}

The guardian also recommended that Breauna have "a period of daily unsupervised contact" with her grandparents. Notwithstanding this recommendation, it took a request for hearing from the grandfather to bring the matter to the court's attention. Fully six months after the initial recommendation, the court forced the Department to undertake reunification plans.

[¶32] At that hearing, the court (Goranites, J.) appropriately required an immediate and "intensive" reunification plan for the placement of Breauna with her grandfather. Unfortunately, by the time that plan was implemented in February of 1998 Breauna was three years old. She had been in the Department's custody for exactly two years and was attached to her foster mother. The experts retained to draw up the intensive plan structured an eight-week introduction, during which Breauna and her grandfather would have two, two-hour supervised visits each week. Because of Breauna's age, attachments, and fragility, the process was necessarily slow. The grandfather, who had informed the reunification team that he was unable to remain in Maine for longer than four weeks, became frustrated with the entire process and eventually abandoned efforts to cooperate with the Department. Breauna's mother, with whom the Department had temporarily suspended reunification efforts in order to concentrate on the grandfather, returned to Maine in August of 1998 to attempt reunification herself. Two weeks later, the Department filed a petition to terminate her parental rights.

[¶33] In termination of parental rights cases, the timeframe

must be "measured from the child's perspective." *In re Leona T.*, 609 A.2d 1157, 1159 (Me. 1992). A one-year delay can be a lifetime from an infant's perspective. In this case, two years passed between the time the Department took Breauna into its care and the implementation of the intensive reunification plan. No child or family should have to wait that long simply because of a process that is "a lot of paperwork . . . a lot of shuffling."

[¶34] The Legislature recently responded to concerns about delays in permanency planning for children in foster care with the enactment of a comprehensive bill intended to assure more speedy resolutions for such children. See *P.L.* 1997, ch. 715, § B-14. Particularly recognizing the harm that can be done to a child who has no permanent home, the Legislature mandated that, except in unusual circumstances, the Department move to terminate the parental rights of any child who has been in the Department's care for "15 out of the most recent 22 months." 22 M.R.S.A. § 4052(2-A)(A) (Supp. 1998).{7} Here, Breauna had been in care for 24 months before the Department made an effort to place her with her grandfather. It comes as no surprise that the effort would prove nearly impossible for out-of-state relatives after such a

lengthy passage of time.

[¶35] I do not question the Department's responsibility to assure that a prospective placement with a child's relatives will be a safe and loving placement.{8} The process of gathering that information, however, should be done expeditiously. Whether the delay was caused by the Department of Human Services in Maine, other components of the international child placement bureaucracy, or a combination of both,{9} the delay proved fatal to the final efforts to place Breauna with her grandfather.

[¶36] To date, Breauna has spent over three and one-half years with the same foster family-nearly eighty per cent of her young life. Her mother's inexperience and departure from the country as soon as Breauna was taken into custody combined to create a situation where she cannot now step back into Breauna's life. There is little doubt that Breauna has grown attached to her foster family and that removing her from their care at this late date could be devastating. We simply cannot turn back the clock for Breauna.

[¶37] However, as the Department attempts to comply with the mandates created by the recent actions of the Legislature, all

persons involved with child protective proceedings must attend to the child's needs with much greater speed. Without such efforts by all involved, the loss of a family, sadly suffered by Breauna, may be repeated. Accordingly, I concur that the District Court's decision is supported by the record, but I would urge that all involved work to assure that what happened to this family does not occur again.

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FOOTNOTES********** {1}The grandfather had retired from his position with the Air Force, but his wife was still a member of the Air Force, and as her spouse, he was required to follow the regulation. Otherwise, they would lose their cost of living allowance. {2} We stress that our task as an appellate court is to determine whether the record supports the trial court's findings. Thus, we do not independently examine the conduct of DHS. See *In re David H.*, 637 A.2d 1173, 1176 (Me. 1994) (affirming termination of parental rights because record supported court's factual findings, "independent of any findings as to the conduct of DHS.") {3} Section 4055 only requires that the record support a finding that the mother was unwilling or unable to either take responsibility for or protect her child from jeopardy. See 22 M.R.S.A. § 4055 (1992 & Supp. 1998). In this case, the trial court found p, and the record supports p, that the mother was both unwilling and unable to take responsibility for and protect her child from jeopardy. {4} . The grandfather also asserts that the letter was admissible under M.R. Evid. 803 (3). The grandfather is precluded

from raising the issue under M.R. Evid. 803 (3) because it was not offered pursuant to 803 (3) in the trial court. See *Davis v. Picciandra*, 662 A.2d 898, 899 (Me. 1995) (refusing to address an argument because appellant failed to properly preserve the issue by not raising it before the trial court). {5} . During this time the grandfather made efforts to maintain contact with Breauna. He flew back to Maine to visit Breauna in October of 1996, April and August of 1997, and January, February and March of 1998. {6} . See *In re Justin T.*, 640 A.2d 737, 739 (Me. 1994) (cautioning courts not to use the fact that the Department has restricted the relationship of a parent and a child as evidence that termination is in the child's best interest). {7} . This provision is one of many required to be in place in any state receiving federal payments for foster care and adoption assistance. See 42 U.S.C. § 671(16), § 675(5)(E) (1994 & Supp. 1997). {8} . The Department did not act unreasonably in declining to turn Breauna over to her grandfather without first assuring that she would be safely cared for in his home. Once a child is actually in the legal custody of the Department, certain requirements must be met before the child may be placed with a relative. See 22 M.R.S.A. § 4005-B(4) (1992 &

Supp. 1998). Nor do I question the need for the Department to assure that the home offered by Breauna's grandfather was a safe, loving home and one that did not contain the parenting deficits Breauna had experienced in her mother's care. {9} . There are significant restrictions on the Department's freedom to place a child in its custody in the home of any person not living in Maine. See, e.g., *The Interstate Compact on Placement of Children*, 22 M.R.S.A. § 4191-4297 (1992)

APPENDIX B

STATE OF MAINE
CUMBERLAND,ss

DISTRICT COURT
DISTRICT NINE
LOCATION: PORTLAND
DOCKET NO. POR-96-PC-19

DEPARTMENT OF HUMAN SERVICES

in re: BREAUNA NEWMAN

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER OF TERMINATION

This matter came before the Court for a consolidated hearing on pending Motions for Judicial Review as ordered by the Court and filed by the mother and maternal grandfather of the above-named child and the Department's Petition for Termination of Parental Rights. All parties were duly and seasonably notified of this hearing. Hearing was held on September 2, 1998, November 2, 1998, and November 3, 1998, at which the following were present: the Department, through its authorized agent, Lurana Payson, represented by Michael C. Kearney, Assistant Attorney General; the mother, Christina Then, represented by her attorney, James Hewes, Esquire; Kevin Gordon, Esquire and Alice Bradbury as Breauna Newman's Guardians *ad litem*, and intervenor Judith Doyer, represenrted by her attorney, Anne Pomroy, Esquire. Intervenor

Robert Then, though not personally present, was represented by his attorney, Caroline Gardiner, Esquire, at all three days of hearing. Gerald Newman, the father of the above-named child, did not appear personally, but was represented by his attorney, Edmund Folsom, Esquire, on September 2, 1998 and November 2, 1998.

Testimony was taken from the following individuals: Judith Doyer, Breauna's foster mother; Lurana Payson, Department caseworker, Dr. Kerry Drach, Spurwink Clinic; Rosemary Merrill, former Guardian *ad litem*, and Christina The, Breauna's mother. In addition, the Court received into evidence numerous exhibits admitted by the parties, including the Guardians' written report. Having considered the evidence presented at hearing and the written arguments submitted by counsel, the Court hereby finds and concludes as follows.

On February 2, 1996, the Maine Department of Human Services filed a Petition for Child Protection Order relative to Breauna Newman on the grounds that the child, then only one year old, was suffering from serious failure to thrive despite intensive in-home intervention by Case Family Services. The Department did not seek immediate custody of Breauna and instead refereed the

child and her mother, Christina Then, top the Spurwink Clinic for a comprehensive psychological and medical evaluation. On March 7, 1996, after Spurwink informed the Department that Breauna's condition was "critically serious," the Department requested and received a Preliminary Child Protection Order which, *inter alia*, placed Breauna in the Department's temporary custody. After hearing held on June 10, 1996, the Court found that Breauna was in circumstances of jeopardy due to her failure to thrive and ordered that she be placed in the Department's full custody. The Court also ordered that her mother Christina Then, who at the time was only fifteen years old, participate in reunification services and visits.

Breauna's maternal grandfather, Robert Then, filed a Motion for Intervenor status which was granted by agreement of the parties in September 1996. Given Christina Then's young age and Robert Then's interest in keeping Breauna in the family, the focus of the reunification efforts for Breauna shifted to Robert Then, who at that time was in the military service and stationed in Italy. The Department, through the necessary international channels, made a referral for a home study for Mr. Then, a complex process further complicated by Robert Then's transfer from Italy to Germany in

December 1996. The home study was not completed by International Social Service until July 30, 1997. The evaluator recommended that a process of transition be undertaken to acquaint Breauna with Mr. Then, his wife and family, and that the transition would be best undertaken in Portland, Maine.

The matter came before the Court again on January 26, 1998, for a Judicial Review Hearing. Bother Robert and Christina Then personally appeared for that proceeding, and an agreement was reached for the entry of a Stipulated Order. By the terms of that order, the Department and Robert Then were to engage in an intensive reunification process to enable the transfer of Breauna into the care of her grandfather. By agreement, the order also included a provision relieving the Department of its obligation to reunify with her parents, Christina Then and Gerald Newman.

In accordance with the Order, the Department retained the services of the Spurwink Clinic to devise and implement the reunification plan with Robert Then. A team of experts was assembled, and on February 25, 1998, the parties, with counsel, met with members of the team to finalize a "Reunification/Transfer Plan." Although the team originally considered a thirty-day period

necessary to effect transition, it revised its opinion, concluding that a period of at least sixty days would be necessary. Robert Then, whose stay in the United State could not be extended beyond thirty days, left Maine on March 25, 1998, and returned to Germany. The plan for intensive reunification was suspended.

Recognizing that the efforts to place Breauna with Robert Then had stopped, Christina Then, in June of 1998, filed a motion for Judicial Review requesting that the Department once again be obligated to reunify her with Breauna. Ms. Then left her father's home in Germany and in early August returned to Portland, Maine, where she now resides. It is Ms. Then's position that with appropriate services and given her sufficient maturity, she, now age nineteen, would be able to care for her child. It is the position of the Department and the Guardians that Ms. Then's rights be terminated.

When the Department began its involvement with this family, Christina Then underwent a psychological evaluation in February of 1996 to assess her ability to parent Breauna. Dr. Kerry Drach, who performed the evaluation, concluded that Ms. Then had a guarded prognosis for success as a parent. Although he found her

to have certain strengths–given her cognitive abilities, absence of psychopathology and an established emotional attachment with her daughter–he also found her to manifest significant deficits in parenting skills, most notably in not being adequately attuned to her child's emotional needs and physical needs relative to feeding. Despite assistance to Christina Then from service providers prior to the removal of Breauna from her care, one year old Breauna failed to gain weight because her mother simply was not feeding the child enough food. It was concluded at that time that Ms. Then's inability to meet her daughter's nutritional needs constituted a diagnosis for the child of nonorganic failure to thrive which was critically serious and posed a significant immediate risk to Breauna. Dr. Drach cautioned that is Breauna were removed from her mother's care it was essential that mother and daughter maintain frequent contact to preserve the child's attachment to her mother.

The Order issued by the Court on July 22, 1996, found that protective custody was necessary because Breauna's caloric deprivation could lead to serious and permanent brain damage and developmental delays. The Court also found that videotapes of the mother and child together revealed a marked dearth of interaction. It

further found that Christina Then had maintained only minimal contact with the child once she was placed in foster care. Apparently, Ms. Then had gone to Europe in December of 1996 to live with her father.

When the parties agreed to pursue efforts to place Breauna with Christina Then's father, Robert Then, Christina agreed to the entry of an order relieving the Department of any obligation to reunify Breauna with her. While in Europe, Christina took substantial steps to get her life together. She obtained her GED and maintained steady employment. She also began parenting classes in the hopes of one day being able to care for Breauna herself. She stepped up her efforts to regain custody of her daughter when the process for placing the child with Robert Then was suspended. In August of 1998, she returned to Maine, obtained an apartment and a steady job, and began parenting classes at the YWCA. Although she attempted to visit with Breauna, her work schedule often prevented her from regular contact.

Following the commencement of the Judicial Review proceeding in September of 1998, the Court ordered that Christina The undergo an updated psychological evaluation to assess her

parenting capacity now that she was nineteen years old. According to Dr. Drach, the psychometric testing indicates Ms. Then to be a rigid individual who has difficulties understanding her own motivations and the motivations of others. He found a significant increase in her defensiveness and lack of acknowledgment of her problems as compared to the assessment conducted two years before. Although she does not present with any acute psychiatric condition of personality disorder, her rigid, defensive personality style is likely to interfere with her ability to understand her own and he daughter's feelings; it is also likely to make it difficult for Ms. Then to fully appreciate the impact of her behavior on her daughter, including the impact of a custody change on the child. Dr. Drach further opines that Ms. Then needs to learn much in order to function as an emotionally attentive attachment figure who is able to mediate and structure her daughter's activities and experience on a day-to-day basis. She would require intensive, attachment-oriented intervention in order to foster her daughter's attachment to her. Dr. Drach testified that it would necessitate a number of months to determine if Ms. Then would be able to follow though on a commitment to reunification.

In view of this evidence, the Court finds that Christina Then has been unwilling and unable to take responsibility for Breauna in a time reasonably calculated to meet Breauna's needs and that she is unwilling and unable to protect Breauna from jeopardy in a time reasonably calculated to meet Breauna's needs. Breauna is a fragile child. Now age three years and nine months, she suffers from a myriad of medical problems ranging from a heart defect to neurological developmental delays. Her treating physician, Dr. Madonna Brown, noted that Breauna needs a stable caretaker; that a strong attachment to her foster parents Judy and Ray Doyer has provided stability which has been the main source of her progress on failure to thrive and emotional problems. Dr. Brown further opined that the value of this ongoing stable source of reference is great, and disruption undoubtedly will result in a emotional difficulties either short term or long term.

Dr. Brown's concerns are echoed by the Spurwink Clinic. After and intensive and comprehensive assessment in April of 1997, the Clinic made the following recommendation:

> "In view of Breauna's delays and her great vulnerability to losing what she has gained in the past year, any change in her placement must be approached with great care. Past

> evaluations of her mother, Christina's parenting abilities, and accounts of her visits with Breauna, arouse great concern about her resuming parental care. If this child's special needs for empathy, patience, careful stimulation, and proactive physical monitoring are not met now, she can not attain age level development. If Christina is to resume custody, she would need a great deal of professional help. Ot {sic} and speech and language therapies, and guidance in parenting will be essential."

On September 22, 1998, Breauna was reassessed by the Spurwink's Developmental Behavioral Evaluation Clinic. Spurwink strongly recommended that the Department resolve Breauna's long-term custody and placement issues as soon as possible. They further opined that "[d]isruption of Breauna's current loving foster home placement would be extremely detrimental to her developmentally, socially, and emotionally." Although she has made significant gains since the last evaluation, Breauna is a special needs child who will remain vulnerable, both emotionally and developmentally, due to her original diagnosis as a failure to thrive child. Spurwink concluded that "Breauna is a little girl at risk, given her traumatic history, current unresolved custody and placement needs, current emotional and behavioral needs, and some concerns regarding motor perceptual and language abilities." While Christina Then has begun to take steps toward learning how to safely care for Breauna, the

evidence is clear and convincing that she has not done enough. Over two years have passed since her daughter left her care. To date, Ms. Then has take some parenting classes. She has not addressed the issues surrounding the child's failure to thrive. But for her more recent efforts since her return to this country in August, Ms. Then has not attempted to have any significant degree of contact with Breauna. She moved to Europe when Breauna was placed in foster care, and even delayed her return by two or three weeks to vacation in Guam. To require Breauna to wait even longer and weather more disruption while her mother begins in earnest the reunification process would jeopardize the mental, physical and emotional well-being of this child.

Ms. The argues that her decision not to actively engage in reunification efforts for a substantial portion of time over the last few years was the result of her assumption that Breauna would be placed with her own father Robert Then; that because the Department agreed to intensive efforts to transfer custody of Breauna to his care, the Department is now estopped from using Christina's cessation of reunification activities against her in this case. This argument is without merit. To invoke the application of

equitable estoppel, Ms. Then must prove that the reliance on what is untrue. See *Berry v. Board of Trustees*, 663 A.2d 14 (Me. 1995). There is nothing in this record to suggest that the Department made any misrepresentations to Christina Then. While the Department was willing to engage in intensive efforts to place Breauna with her grandfather, it is clear from the Court Order adopting the parties' agreement that the success of those efforts were left to be determined. Placement with Robert Then was not a certainty, and Christina's decision to view her father's position in this proceeding as identical to her own was a tactical decision on her part. Moreover, although she agreed, as part of that arrangement, that the Department be relieved of its obligation to provide her with reunification services, she as in no way precluded from engaging in such efforts on her own.

With respect to Gerald Newman, Breauna's father, the record reflects that by Order dated January 26, 1998, the Department was relieved of any further reunification obligations. Mr. Newman has not responded to notice of this proceeding and has, through his attorney, filed a consent to termination of parental rights. The evidence is therefore clear and convincing that Breauna

Newman has been abandoned by him.

The Court further finds clear and convincing evidence that termination of parental rights is in Breauna's best interest. This is a child who has been in foster care for more than two-thirds of her life. She has developed a significant attachment to her foster parents, Judy and Ray Doyer, who have provided her care for two and a half years and who have demonstrated a consistent capacity to meet Breauna's special needs. The results of the psychological evaluations of Breauna dine in 1996 and 1998 emphasize that stability and permanency are essential for her continued physical, emotional and mental development. Since her birth, she has had no contact of any significance with her father, and to keep her in foster care for an indefinite period to assess whether her mother could safely care for Breauna would undermine the progress the child has been able to achieve thus far.

It is the position of Intervenor Robert Then that in considering the Petition for Termination the Court must expand the term "parent" to include him for purposes of assessing parental fitness under 22 M.R.S.A. § 4055(B)(2), as efforts since his becoming as party in this proceeding were focused on transfer of

Breauna to his custody. The term "parent" is clearly defined in 22 M.R.S.A. § 4002(7) and does not include a party who has been granted intervenor status under 22 M.R.S.A. § 4005-B.

The Court is mindful of Robert Then's anger that implementation of the plan to transfer Breauna to his custody was aborted. In 22 M.R.S.A. §4005-B)4_, the Legislature has enunciated a preference for placing children with their biological relatives. That statutory provision is expressly limited, however, by the condition that the Court must find, before effecting such placement, that it is in the child's best interest. Whether Breauna's best interests would be served by her being transferred to her grandfather's custody could not be determined because Robert Then, for whatever reasons, was not able to make himself available for the duration of the transfer plan. The experts appointed to craft the transfer plan concluded that a minimum of 60 days was essential for the child. Mr. Then's ability to come to the United States for a period of only 30 days precluded implementation of that plan. The Court Order of January 26, 1998, issued by agreement of the parties, expressly provides:

> "The parties understand that any placement with Robert and Keri Then is contingent on Breauna's successful

> transition as determined by a mutually agreed upon treatment profession. Breauna's transition and placement shall occur as soon as possible, *consistent with her needs . . .*"

The undisputed evidence of the treatment professional in this case is that Breauna needed a transition period of no less than 60 days. Mr. The was unable to meet that need.

Based on the aforementioned findings, IT IS ORDERED that the parents, Christina Then and Gerald Newman and the child, Breauna Newman, are divested of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except any inheritance rights of the child or any entitlement of the child top benefits form a third person, agency, federally-recognized Indian tribe, state or the United States should not be effected by this Order. Furthermore, the parent shall not be entitled to notice of the child adoption nor shall the parent have any right to participate or object to the proceedings, The termination of one parent's rights shall not affect the rights of the other parent.

The Clerk shall enter the following in the docket:

The Findings of Fact and conclusions of law and Order of Termination effective December 22, 1998 is incorporated in the docket by reference. This entry is made in accorddance with

M.R.C.P. 79(a) at the specific direction of the Court.

Dated: December 22, 1998

___/s/_____
Jane S. Bradley
Judge, Maine District Court

APPENDIX C

STATE OF MAINE
CUMBERLAND, ss.

DISTRICT COURT
DISTRICT NINE
DIV. OF SO. CUMBERLAND
Civil Docket No. 96-PC-19

MAINE DEPARTMENT OF HUMAN SERVICES
IN RE: BREAUNA NEWMAN

ORDER AFTER REVIEW

By the terms of the prior Order in this matter, further Judicial Review of the Child Protection Order was set for January 26, 1998. All parties were duly and seasonably notified of the pendency of the proceeding.

Present before the Court on that date were the following: the Department, through its authorized agent, Lurana Payson represented by Michael C. Kearney, Assistant Attorney General; the mother, Christina Then, represented by her attorney, James Hewes, Esquire; the father, Gerald Newman, represented by his attorney, Edmund Folsom, Esquire; the maternal grandfather, Robert Then, represented by his attorney, Caroline Gardiner, Esquire; the foster parents, Judith and Raymond Doyer, represented by their attorney,

Anne Pomroy, Esquire; and the child, though not present, was represented by her Guardian *ad litem*, Rosemary Merrill, Esquire.

At the outset, the parties represented to this Court that they were in agreement as to findings and further disposition in this matter. The following exhibits were admitted by agreement:

1.) Spurwink's Infant Health Clinic's report dated 5/29/97;
2.) International Social Services' Home Study Report (re: Robert Then);
3.) Elizabeth Conley's report dated November 4, 1997;
4.) Statement of Breauna's medical needs drafted by Dr. Brown;
5.) Diane Loranger's psychological evaluation of Robert Then dated 1/12/97;
6.) Guardian ad Litem's Report dated 9/ 3 /96, and addendum dated 9/16/97;
7.) Robert Then's Exhibits 1,2,3,4,5,6,7,&8.

Having reviewed the proposal of the parties, the circumstances of the parents and child, the actions taken to date by the Department and the parents to rehabilitate and reunify the family, the plan presented for the child, the recommendation of the Guardian *ad Litem*, as well as other relevant evidence, this Court finds, by agreement of the parties and a preponderance of the evidence, that the Department has made reasonable efforts to rehabilitate and reunify with the parents, that the child continues to

be in need of a Child Protection Order, and that the following disposition regarding the above-named child is appropriate under the facts presented.

IT IS HEREBY ORDERED, pursuant to 22 M.R.S.A. §§4036 and 4038, that Breauna Newman is subject to the following Order effective January 26, 1998:

1. The child shall remain in the custody of the State of Maine Department of Human Services.

2. Robert Then shall temporarily relocate to the Portland area so that intensive reunification services can be implemented beginning February 25, 1998. The parties understand that any placement with Robert and Ken Then is contingent on Breauna's successful transition as determined by a mutually agreed upon treatment professional. Breauna's transition and placement with the Thens shall occur as soon as possible, consistent with her needs, and be substantially complete by April 25, 1998.

3. The Department of Human Services shall retain the services of a treatment professional to monitor Breauna's emotional, developmental, and physical needs during this intensive

reunification period.

4. The parties shall consult at least weekly with the treatment professional to ensure that Breauna's needs are consistent reunification plan.

5. The Department is relieved of reunification responsibilities with the parents, Christina Then and Gerald Newman.

6. The reunification plan is contingent upon Robert and Ken Then's ability and willingness to assume full custody of Breauna. Christina Then shall not assume any custodial responsibilities during reunification and any subsequent placement with Robert Then.

7. The parties shall meet at DHS at 10:00 a.m., on 2/25/98.

IT IS FURTHER ORDERED that this matter be further reviewed by this Court on March 17, 1998 at 1:00 P.M., or earlier upon motion of a party. Service of this Order by the means indicated below shall constitute sufficient notice of the scheduled Review. No further notice of the Review need be given.

The Clerk shall enter the following in the docket:

The Order After Review effective January 26, 1998 is incorporated in the docket by reference. This entry is made in accordance with M.R.Civ.P.79(a) at the specific direction of the Court

DATED: 1/26/98

/s/
Peter J. Goranites
Judge, Maine District Court

NOTICE TO PARENTS AND CUSTODIANS

You are hereby notified that, pursuant to 22 M.R.S.A. §403S, you have the right to bring a Motion for Judicial Review seeking amendment of this Order.

SERVICE OF ORDER

The parties have been provided with copies of the Order by providing a copy in hand to the following individuals:

Michael C Kearney, Assistant Attorney General 59 Preble Street Portland, ME, 04101.

Lurana Payson, Department of Human Services, 509 Forest Avenue, Portland ME, 04101.

James Hewes, Esq., (attorney for Christina Then) 48 Free Street, Portland, ME, 04101.

Edmund Folsom, Esq., (attorney for Gerald Newman) 17 South Street, Portland ME 04101.

Caroline Gardiner, Esq. (attorney for Robert Then) 80 Exchange St., Portland, ME 04101-5035.

Rose Mary Merrill, Esq., Guardian ad litem, 75 Pearl Street, Suite #207 Portland, ME 04101.

Anne Pomroy, Esquire, 34 Portland Ave., PO Box 750, Old Orchard Beach, ME 04064-0750.

Dated 1/26/98
/s/ Peter J Goranites, Judge

APPENDIX D

STATE OF MAINE
CUMBERLAND, ss.

DISTRICT COURT
DISTRICT NINE
DIV. OF SO. CUMBERLAND
Civil Docket No. 96-PC-19

MAINE DEPARTMENT OF HUMAN SERVICES

IN RE: **CHILD**

BREAUNA NEWMAN **PROTECTION ORDER**

This matter came before this Court on June 10, 1996 for the purpose of a hearing on the Department's Petition for Child Protection Order regarding the above-named child. All parties, except the father, were duly and seasonably notified t the pendency of this proceeding.

Present before the Court on that date were the following: the Department, through its authorized agent, Stephanie Correard, represented by Michael C. Kearney, Assistant Attorney General; and the mother, Cristina Then, though not present, was represented by her attorney, James Hewes, Esquire. The father, Gerald Newman, was not served notice of this proceeding and his rights shall be addressed it the hearing on the Petition for Child Protection Order scheduled for July 16, 1996. he child, though not present, was represented by her

Guardian *ad litem*, Mary Merrill, Esquire.

After hearing the testimony of **Dr. Lawrence Ricci**, Director of the Spurwink Clinic, Carleton Charity, social worker with Casey Family Services, and **Stephanie Correard**, DHS caseworker, and after having reviewed State's Exhibits #1-4, the Court finds by a preponderance of the evidence that Breaunna Newman, age one year, four months, is in circumstances of jeopardy.

Breaunna suffered from non-organic failure to thrive while in the care of her mother, Cristina Then. Dr. Ricci testified that the child's weight would drop from the tenth percentile to the fifth percentile when the child was removed from a voluntary placement and returned to the custody of her mother. Dr. Ricci testified that growth charts indicated that the child's weight would consistently and dramatically drop when she was returned to the custody of the mother from another placement. When Department requested and received a preliminary order on March 7, 1996, Breaunna's weight was below the fifth percentile. According to Dr. Ricci, Breaunna was in immediate risk of serious harm due to caloric deprivation and that this deprivation could result in serious and permanent brain damage and developmental delays. The Spurwink Team also concluded that despite

assistance from Casey Family Services and Spurwink, Christina Then simply does not feed or nurture Breaunna and noted that "[o]ne of most outstanding findings on the videotapes [of the mother and child] is interactional poverty." State's Exhibit 3.

Stephanie Correard, the Department's caseworker, testified that Christina then has had minimal contact with the Department and last visited the child on April 18, 1996. Christina Then failed to attend the following visit in April and moved to New York and then Italy. She has not called to check on the welfare of Breaunna.

Based on these findings, the Court finds, by a preponderance of the evidence, that the above-named minor child is in jeopardy to her health and welfare in the absence of a Child Protection Order, and that the Department of Human Services made reasonable efforts to prevent the need to remove the child from the home.

IT IS HEREBY ORDERED, pursuant to 22 M.R.S.A. §§4035 and 4036, that Breaunna Newman is subject to the following Order effective June 10, 1996:

1. The child shall be placed in the full custody of the State of Maine Department of Human Services.

2. Christina Then shall contact the Department and follow

the recommendations of the Department and Guardian ad litem for services and treatment.

3. Visitation between Breaunna Newman and Christina Then shall be consistent, with the child's best interests as determined by the Department and the Guardian ad litem.

IT IS FURTHER ORDERED that the parent shall provide the Court with the financial affidavits as required by the Child Support Guidelines prior to the next hearing in this matter. Failure to file such affidavits may result in the issuance of a support order based upon other information made available to the Court at that time.

IT IS FURTHER ORDERED that this matter be further reviewed by this court on **September 3, 1996 at 1:00 P.M.**, or within eighteen (18) months of this Order, or earlier upon motion of a party. Service of this Order by the means indicated below shall constitute sufficient notice of the scheduled Review. No further notice of the review need be given. It is anticipated that if the child is in Department of Human Services custody, a permanent plan shall be made for the child no later than eighteen (18) months from the effective date of the Child Protection Order pursuant to 22 M.R.S.A. §4038(7).

The effective date of this Order shall be the date of hearing.

June 10, 1996.

The Clerk shall enter the following in the docket:

The Child Protection Order dated 7/22, 1996, is incorporated in the docket by reference. This entry is made in accordance with M.R.Civ.P, 79(a) at the specific direction of the Court.

Dated at Portland, Maine, this _____ day of 7/22, 1996.

A TRUE ATTESTED COPY

/s/ Roland Beaudoin
Judge, Maine District Court

NOTICE TO PARENTS AND CUSTODIANS

You are hereby notified that, pursuant to 22 M.R.S.A. §4038, you have the right to bring a Motion for Judicial Review seeking amendment of this Child Protection Order.

SERVICE OF ORDER

The parties have been provided with copies of the Order by sending a copy by ordinary mail to the following individuals:

Michael C. Kearney, Assistant Attorney General, 59 Preble Street, Portland, Maine, 04101.

Stephanie Correard, Department of Human Services, 509 Forest Avenue, Portland, Maine, 04101.

James Hewes, Esq., (attorney for Christina Then) 48 Free

Street, Portland, ME 04101.

Gerald Newman, 1 Sherman Street, Portland, ME 04102

Rose Mary Merrill, Esq., Guardian ad litem 75 Pearl Street, Ste. #207 Portland, ME 04101-4168.

Edmund Folsom, Esq., 17 South Street, Portland, ME 04101

Dated: 7/22/96 /s/

STATE OF MAINE
CUMBERLAND, S.S.

DISTRICT COURT
DISTRICT NINE
DIV.of SO. CUMBERLAND
Civil Docket No. 96-PC-19

MAINE DEPARTMENT OF HUMAN SERVICES

IN RE: BREAUNNA NEWMAN

ORDER AFTER REVIEW AND AMENDMENT TO CHILD PROTECTION ORDER

This matter came before this Court on September 3, 1996, for purposes of a hearing on the Department's Petition for Child Protection Order in regards to the father, Gerald Newman, and also for a Judicial Review in regards to mother, Christina Then. All parties were duly and seasonably notified of the pendency of this proceeding.

Present before the Court on that date were the following: the Department through its authorized agent, Lurana Payson, represented by Michael C. Kearney, Assistant Attorney General; the mother of the above-named child, Christina Then though not present, was represented by her attorney, James Hewes, Esq.; and the father, Gerald Newman, was not present, but was represented by his attorney, Edmund Folsom, Esq. The child, though not

present, was represented by her Guardian ad litem, Rose Mary Merrill, Esq.

The parties stipulated that jeopardy exists as to the father, Gerald Newman, due to Gerald Newman's inability to care for the child at this time.

Based on the evidence presented and the stipulation of the parties, the Court finds that the Department has made reasonable efforts to prevent the need to remove the child from the home and has made reasonable efforts to rehabilitate and reunify the family in regards to the mother.

IT IS HEREBY ORDERED, pursuant to 22 M.R.S.A. §§4036 and 4038, that Breaunna Newman is subject to the following Order effective September 3, 1996:

1. The child shall remain in the full custody of the State of Maine Department of Human Services.

2. The Child Protection Order dated July 22, 1996 shall remain in full force and effect.

3. Gerald Newman shall participate in reunification services as recommended by the Department, evaluators, and Guardian ad

litem.

IT IS FURTHER ORDERED that this matter be further reviewed by this Court **on March 18, 1997 at 1:00 P.M.**, or earlier upon motion of a party. Service of this Order by the means indicated below shall constitute sufficient notice of the scheduled Review. No further notice of the Review need be given. It is anticipated that if the child is in Department of Human Services custody, a permanent plan shall be made for the child no later than eighteen (18) months from the effective date of the Child Protection Order pursuant to 22 M.R.S.A. §4038(7).

The Clerk shall enter the following in the docket:

The Order After Review is incorporated in the docket by reference. This entry is made in accordance with M.R.Civ.P. 79(a) at the specific direction of the Court.

Dated: 9/24/96

/s/
Alexander MacNichol
Judge, Maine District Court

A TRUE COPY ATTEST

/s/ Linda Jowett
CLERK

NOTICE TO PARENTS AND CUSTODIANS

You are hereby notified that, pursuant to 22 M.R.S.A. §4038, you have the right to bring a Motion for Judicial Review seeking amendment of this Order.

SERVICE OF ORDER

The parties have been provided with copies of the Order by sending a copy by ordinary, mail to the following individuals:

Michael C. Kearney, Assistant Attorney General, 59 Preble Street, Portland, ME, 04101

Lurana Payson, Department of Human Services, 509 Forest Avenue, Portland, ME, 04101.

Stephanie Correard/ Lurana Payson, Department of Human Services, 509 Forest Ave., Portland, ME 04101.

James Hewes, Esq., 48 Free Street, Portland, ME 04101.

Rose Mar; Merrill, Esq., Guardian ad litem, 75 Pearl Street St., Ste. #207, Portland, ME 04101.

Edmund Folsom, Esq., 17 South Street, Portland, ME 04101.

Dated: 9/27/96

/s/
Asst. Clerk of the District Court

APPENDIX E

STATE OF MAINE
CUMBERLAND ,SS

DISTRICT COURT
DISTRICT NINTH
DIV. OF SO. CUMBERLAND
CIVIL DOCKET NO: 96-PC-19

MAINE DEPARTMENT OF HUMAN SERVICES

IN RE: Breaunna Newman

PETITION FOR CHILD PROTECTION ORDER

Petitioner, the State of Maine Department of Human Services, by it's duly authorized agent, June M. King being first duly sworn, under oath, states upon information and belief, that:

1. CHILD:

Breaunna Newman, born February 9, 1995city/town of Portland, State of Maine presently residing in Portland, Maine is the child of:

2. MOTHER:

Christina Then, whose residence is 80 Grant Street, Portland, County of Cumberland State of Maine.

FATHER:

Gerald Newman, whose residence is Portland County of Cumberland State of Maine.

INTERESTED PARTY:

_____, whose residence is _____ County of _____ State of Maine is an interested party regarding the above-named child.

3. The legal residence of the child is Portland, Maine. The child is now living in Portland, Maine.

4. The child is in circumstances of jeopardy to her health or welfare and is in need of protection.

5. Following is a summary of the facts which the Petitioner believes constitute circumstances of jeopardy to the child's health or welfare:

That jeopardy being failure to thrive as evidenced by but not limited to the following:

Breaunna Newman (11 months) weighed 15 lb. 4 oz. On 12/6/95 while in her mother's care. After living with Tracy Williams for approximately 5 weeks Breaunna increasingly gained weight. On 1/11/96, Breaunna's weight had increased to 17 lb. 2 oz. Since

Breaunna (11 months) has been back in her mother's care, Breaunna's weight has increasingly declined. On 1/25/96, Katie Gizenbuger, R.N. of Portland Public Health weighed Breaunna at 16 lb. 2 oz.

Breaunna Newman has been diagnosed by Dr. Goldsborough, D. O. with failure to thrive.

In addition, Breaunna received cigarette burns on her hands. Christina Then, mother of Breaunna, admits that Breaunnna was in her care when she received these cigarette burns.

Christina Then has had intensive home based services through Casey Family for the last four weeks; specifically, Christina has been receiving nutritional education regarding Breaunna's feeding schedule. However, Breaunna Newman continues to lose weight.

The Department believes that these and other factors constitute jeopardy to Breaunna Newman pursuant to 22 MRSA ss 4034 &

4036.

6. Notice to Parents and Custodians Regarding Legal Counsel: Parents and custodians are entitled to counsel in these proceedings. If you want an attorney but are unable to afford one, you should contact the Court at the telephone number 207-822-4200 as soon as possible to request appointed counsel.

7. Notice Regarding Parental Rights

Failure to appear at hearings regarding this matter may be determined to indicate an intent to abandon the child pursuant to 22 MRSA § 4002 (1-A).

These proceedings could eventually lead to termination of parental right under 22 MRSA §§4051 - 4057.

PRELIMINARY PROTECTION

8. The child is in immediate risk of serious harm and is in need of protection pending entry of a final protection order.

9. Following is a summary of the facts which Petitioner believes constitute immediate risk of serious harm to the child (see attached affidavit(s) for additional facts)..

10. Pursuant to 22 M.R.S.A. §4033 (2):

__X___ Notice of the Petitioner's intent to request a Preliminary Protection Order has been given to the parent(s) and custodian(s),

_____

_____ Notice has been attempted without success to parent(s) and custodian(s),

_____

_____ Notice has not been attempted because of the Petitioner's belief that:

_____

a. The child would suffer serious harm during the time needed to notify the parent(s) or custodian(s), _____

b. Prior notice to the parent(s) or custodian(s), _____ would increase risk of serious harm to the child or petitioner.

WHEREFORE the Petitioner prays:

1. That the Court fix a time for hearing on this Petition and order of notice of the hearing to parents or custodians of the child, the guardian ad litem for the child and any other party named in the Petition.

2. That, pursuant to 22 M.R.S.A §4005, the Court appoint a guardian ad litem for the child.

3. That, after adjudicatory hearing and finding of jeopardy tothe child's health or welfare and after dispositional hearing, the Court issue a final protection order pursuant to 22 M.R.S.A. §§4035 and

4036, specifically ordering that:

Custody of Breaunna Newman be removed from Christina Then and granted to the State of Maine Department of Human Services.

4. That, pending a final protection order, the Court issue a preliminary protection order pursuant to 22 M.R.S.A. §§4034 and 4036, specifically ordering that:

5. That, if the child is removed from the custody of a parent, the Court order each parent to pay a reasonable amount of child support.

State of Maine Department of Human Services

by _____

Address 509 Forest Avenue, Portland, Maine
Phone 774-4581

Subscribed and sworn to before me on February 5, 1996

_____

Notary Public
Edda Bailey
Notary Public, Maine
My Commission Expires June 15, 2001

STATE OF MAINE
CUMBERLAND, SS

DISTRICT COURT
DISTRICT NINTH
DIVISION SO. CUMBERLAND

MAINE DEPARTMENT OF HUMAN SERVICES

IN RE: Breaunna Newman

ORDER OF PRELIMINARY CHILD PROTECTION AND NOTICE TO PARENTS AND CUSTODIANS

In the matter of protection of the above-named child, this Court finds by a preponderance of evidence that reasonable efforts were made to prevent the need for removal of the child from the home, and that the child is in immediate risk of serious harm.

1. IT IS ORDERED, pursuant to 22 M.R.S.A. ss 4034 and 4036 that the above-named child be given the following protection:

Immediate custody of Breaunna Newman be taken from Christina Then and granted to the State of Maine, Department of Human Services.

Pending the entry of a final protection order under 22 M.R.S.A. ss 4035 and 4036.

2. IT IS FURTHER ORDERED that a copy of this Order and Notice of Hearing be served forthwith on the parents and custodians of the above-named child by:

Name of Party	Method of Service
Christina Then	In hand by Sheriff or DHS Agent
Gerald Newman	In hand by Sheriff or DHS Agent
Guardian ad Litem	In hand or by Waiver

3. IT IS FURTHER ORDERED, pursuant to 22 M.R.S.A. ss 4036 (1-G), that:

a. Child support be paid by each parent to the State of Maine Department of Human Services as follows:

To be determined by the Court.

b. No support by a specified parent has been ordered for the following reasons:

The Clerk shall enter the following in the docket: The Preliminary Protection Order dated is incorporated in the docket by reference. This entry is made in accordance with M.D.C.Civ. R. 79 (a) at the specific direction of the court.

Dated: March 7 1996 at Portland Maine.

___/s/_____

Judge of the Ninth District Court

NOTICE TO PARENTS AND CUSTODIANS OF HEARING

A hearing on the foregoing Preliminary Child Protection Order is ordered at the Ninth District Court, Address 205 Newbury Street, Portland in the County of Cumberland on March 12 1996 at 1:00pm so that the parents and custodians may appear and be

heard, pursuant to 22 M.R.S.A. ss 4034.

Dated March 7, 1996 _____/s/_____

Judge of the Ninth District Court

FURTHER COURT ACTION

1. The custodian's voluntary and knowing consent and waiver of hearing having been executed in court before a judge in writing, and being on file with this Court, and Court finds that:

_____ This constitutes a valid waiver of hearing.

And

_____ The foregoing order of hearing is hereby rescinded

Dated _____

Judge of the District Court

2. A noncustodial parent, having on _____, 1995 requested a hearing on the foregoing Preliminary Child Protection Order, a hearing is ordered at the Ninth District Court, Address _____,

County of _____ on _____, 19__ , at _____.m and is further ordered that the parents, custodians, and Petitioner be notified of these proceedings by:

Name of Party	Method of Service

so that they may appear and be heard.

Dated _____

_____

Judge of the Ninth District Court

NOTICE TO PARENTS AND CUSTODIANS REGARDING LEGAL COUNSEL

You are entitled to legal counsel in these proceedings. If you want an attorney but are unable to afford one, you should contact the Court at the telephone number 207 _____ as soon as possible to request appointed counsel.

APPENDIX F

TITLE 22: HEALTH AND WELFARE

SUBTITLE 3: INCOME SUPPLEMENTATION
PART 3: Children
CHAPTER 1071: CHILD AND FAMILY SERVICES AND CHILD PROTECTION ACT
SUBCHAPTER I: GENERAL PROVISIONS
§ 4001. Title

§ 4001. Title

This chapter may be cited as the "Child and Family Services and Child Protection Act."

§ 4002. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have
the following meanings.

1. Abuse or neglect. "Abuse or neglect" means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the child.

1-A. Abandonment. "Abandonment" means any conduct on the part of the parent showing an intent to forego parental duties or relinquish parental claims. The intent may be evidenced by:

A. Failure, for a period of at least 6 months, to communicate meaningfully with the child;

B. Failure, for a period of at least 6 months, to maintain regular visitation with the child;

C. Failure to participate in any plan or program designed to reunite the parent with the child;

D. Deserting the child without affording means of identifying the child and his parent or custodian;

E. Failure to respond to notice of child protective proceedings; or

F. Any other conduct indicating an intent to forego parental duties or relinquish parental claims.

1-B. Aggravating factor. "Aggravating factor" means any of the following circumstances with regard to the parent.

A. The parent has subjected the child to aggravated circumstances including, but not limited to, the following:

(1) Rape, gross sexual misconduct, gross sexual assault, sexual abuse, incest, aggravated assault, kidnapping, promotion of prostitution, abandonment, torture, chronic abuse or any other treatment that is heinous or abhorrent to society; or

(2) Refusal for 6 months to comply with treatment required in a reunification plan.

B. The parent has been convicted of any of the following crimes and the victim of the crime was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent:

(1) Murder;

(2) Felony murder;

(3) Manslaughter;

(4) Aiding, conspiring or soliciting murder or manslaughter;

(5) Felony assault that results in serious bodily injury; or

(6) Any comparable crime in another jurisdiction.

C. The parental rights of the parent to a sibling have been terminated involuntarily.

D. The parent has abandoned the child.

2. Child. "Child" means any person who is less than 18 years of age.

3. Child protection proceeding. "Child protection proceeding" means a proceeding on a child protection petition under subchapter IV, a subsequent proceeding to review or modify a case disposition under section 4038, an appeal under section 4006, a proceeding on a termination petition under subchapter VI, or a proceeding on a medical treatment petition under subchapter VIII.

3-A. Child Welfare Services Ombudsman. "Child Welfare Services Ombudsman" means a public official appointed to receive and investigate citizens' complaints against state agencies which provide child welfare services and which may be infringing on the rights of individuals and, when deemed necessary, propose remedial action.

4. Custodial parent. "Custodial parent" means a parent with custody.

5. Custodian. "Custodian" means the person who has legal custody and power over the person of a child.

5-A. Foster parent. "Foster parent" means a person whose home is licensed by the department as a family foster home as defined in section 8101, subsection 3 and with whom the child lives pursuant to a court order or agreement with the department.

6. Jeopardy to health or welfare or jeopardy. "Jeopardy to health or welfare" or "jeopardy" means serious abuse or neglect, as evidenced by:

A. Serious harm or threat of serious harm;

B. Deprivation of adequate food, clothing, shelter, supervision or care, including health care when that deprivation causes a threat of serious harm;

C. Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm; or

D. The end of voluntary placement, when the imminent return of the child to his custodian causes a threat of serious harm.

6-A. Licensed mental health professional. "Licensed mental health professional" means a psychiatrist, licensed psychologist, licensed clinical social worker or certified social worker.

7. Parent. "Parent" means a natural or adoptive parent, unless parental rights have been terminated.

7-A. Permanent plan. "Permanent plan" means a plan designed to provide long-term stability for a child, which includes, but need not be limited to:

A. Reunification of the child with his family unless reunification has been determined to be inappropriate;

B. Termination of parental rights for the purposes of adoption;

C. Custody to an appropriate person;

D. Long-term foster care as defined in section 4064, subsection 1;

E. Continued care as provided for in section 4061, subsection 1; and

F. Emancipation of the child, if the requirements of Title 15, section 3506-A, are met.

8. Person. "Person" means an individual, corporation, facility, institution or agency, public or private.

9. Person responsible for the child. "Person responsible for the child" means a person with responsibility for a child's health or welfare, whether in the child's home or another home or a facility which, as part of its function, provides for care of the child. It includes the child's custodian.

9-A. Preadoptive parent. "Preadoptive parent" means a person who has entered into a preadoption agreement with the department with respect to the child.

9-B. Relative providing care. "Relative providing care" means the biological or adoptive parent of the child's biological or adoptive parent, or the biological or adoptive sister, brother, aunt, uncle or cousin of the child with whom the child lives and who has taken responsibility for the child.

9-C. Removal of the child from home. "Removal of the child from home" means that the department or a court has taken a child out of the home of the parent, legal guardian or custodian without the permission of the parent or legal guardian.

10. Serious harm. "Serious harm" means:

A. Serious injury;

B. Serious mental or emotional injury or impairment which now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or

C. Sexual abuse or exploitation.

11. Serious injury. "Serious injury" means serious physical injury or impairment.

§ 4003. Purposes

Recognizing that the health and safety of children must be of paramount concern and that the right to family integrity is limited by the right of children to be protected from abuse and neglect and recognizing also that uncertainty and instability are possible in extended foster home or institutional living, it is the intent of the Legislature that this chapter:

1. Authorization. Authorize the department to protect and assist abused and neglected children, children in circumstances which present a substantial risk of abuse and neglect, and their families;

2. Removal from parental custody. Provide that children will be taken from the custody of their parents only where failure to do so would jeopardize their health or welfare;

3. Reunification as a priority. Give family rehabilitation and reunification priority as a means for protecting the welfare of children, but prevent needless delay for permanent plans for children when rehabilitation and reunification is not possible; and

4. Permanent plans for care and custody. Promote the early establishment of permanent plans for the care and custody of children who cannot be returned to their family. It is the intent of the Legislature that the department reduce the number of children receiving assistance under the United States Social Security Act, Title IV-E, who have been in foster care more than 24 months, by 10% each year beginning with the federal fiscal year that starts on October 1, 1983.

§ 4004. Authorizations

1. General. The department may take appropriate action, consistent with available funding, that will help achieve the goals of section 4003 and subchapter XI-A, including:

A. Developing and providing services which:

(1) Support and reinforce parental care of children;
(2) Supplement that care; and
(3) When necessary, substitute for parental care of children;

B. Encouraging the voluntary use of these and other services by families and children who may need them;

C. Cooperating and coordinating with other agencies, facilities or persons providing related services to families and children;

D. Establishing and maintaining a Child Protective Services Contingency Fund to provide temporary assistance to families to help them provide proper care for their children; and

E. Establishing a child death and serious injury review panel for reviewing deaths and serious injuries to children. The panel consists of the following members: the Chief Medical Examiner, a pediatrician, a public health nurse, forensic and community mental health clinicians, law enforcement officers, departmental child welfare staff, district attorneys and criminal or civil assistant attorneys general.

The purpose of the panel is to recommend to state and local agencies methods of improving the child protection system, including modifications of statutes, rules, policies and procedures.

2. Duties. The department shall act to protect abused and neglected children and children in circumstances which present a substantial risk of abuse and neglect, to prevent further abuse and neglect, to enhance the welfare of these children and their families and to preserve family life wherever possible. The department shall:

A. Receive reports of abuse and neglect;

B. Promptly investigate all abuse and neglect cases coming to its attention or in the case of out-of-home abuse and neglect investigations, the department shall act in accordance with subchapter XI-A;

C. Determine the degree of harm or threatened harm to each

child in each case; and

D. Take appropriate action to further the purposes of this chapter.

3. Objection of parent. Except as specifically authorized by law, no person may take charge of a child over the objection of his parent or custodian.

§ 4004-A. Voluntary agreements

1. Agreement authorized. If the following conditions are met, the department and a custodian may enter into a mutual agreement in which the custodian retains custody of the child and the department agrees to provide services to the child.

A. The department finds that staying in the custodian's home would be detrimental to the welfare of the child.

B. The department finds that, absent a mutual agreement, the child is at risk of entering the child protection system or the juvenile justice system.

2. Agreement requirements. An agreement entered into pursuant to subsection 1 must meet the following requirements.

A. The agreement may not exceed 180 days unless, within the 180 days, the District Court has found that returning to the custodian's home would be detrimental to the welfare of the child. If the court has made that determination, the agreement may continue but must be reviewed by the court no more than 18 months after commencement of the agreement and at least every 2 years following the 18-month review.

B. The agreement must specify the legal status of the child and the rights and obligations of the custodian, the child, the department and any other parties to the agreement.

C. If the custodian is able to contribute resources to the care of

the child, that contribution must be specified in the agreement. Resources include, but are not limited to, insurance coverage and disposable income.

D. The agreement must be approved by the commissioner or the commissioner's designee.

3. Additional parties. The Department of Corrections, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Department of Education, the Office of Substance Abuse and any other appropriate state agency may be additional parties to the agreement.

4. Section 4022 not affected. This section does not apply to agreements entered into under section 4022.

5. Rules. The department may adopt rules to implement this section.

§ 4005. Parties' rights to representation; legal counsel

1. Child; guardian ad litem. The following provisions shall govern guardians ad litem. The term guardian ad litem is inclusive of lay court appointed special advocates under Title 4, chapter 31.

A. The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child. The guardian ad litem's reasonable costs and expenses must be paid by the District Court. The appointment must be made as soon as possible after the proceeding is initiated. Guardians ad litem appointed on or after March 1, 2000 must meet the qualifications established by the Supreme Judicial Court.

B. The guardian ad litem shall act in pursuit of the best interests of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible

and appropriate, the following:

(1) Review of relevant mental health records and materials;

(2) Review of relevant medical records;

(3) Review of relevant school records and other pertinent materials;

(4) Interviews with the child with or without other persons present; and

(5) Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.

The guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment by the court and at least once every 3 months thereafter or on a schedule established by the court for reasons specific to the child and family. The guardian ad litem shall report to the court and all parties in writing at 6-month intervals, or as is otherwise ordered by the court, regarding the guardian ad litem's activities on behalf of the child and recommendations concerning the manner in which the court should proceed in the best interest of the child. The court may provide an opportunity for the child to address the court personally if the child requests to do so or if the guardian ad litem believes it is in the child's best interest.

C. The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make a recommendation to the court.

D. The guardian ad litem shall make a written report of the investigation, findings and recommendations, and shall provide a copy of the report to each of the parties reasonably in advance of the hearing, and to the court, except that the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order.

E. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed his wishes, regardless of the recommendation of the guardian ad litem.

F. The guardian ad litem or the child may request the court to appoint legal counsel for the child. The District Court shall pay reasonable costs and expenses of the child's legal counsel.

2. Parents. Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders. They may request the court to appoint legal counsel for them. The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel.

§ 4005-A. Foster parents right to standing and intervenor status in child protection proceedings

1. Definition. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Foster parent" means a person who has had a child in that person's home for at least 120 days and who has received a license for a family foster home as defined in section 8101, subsection 3, or who is a relative.

2. Petition. A foster parent may petition for standing and intervenor status in any child protection proceeding under this chapter regarding a foster child that lives or has lived in the foster parent's home. The standing and intervenor status is limited to that proceeding unless otherwise ordered by the court.

3. Criteria. The court shall make a determination whether to grant standing based on the strength and duration of the relationship between the foster parents and the child and in the best interests of the child.

§ 4005-B. Grandparent's right to standing and intervenor status in

child protection proceedings

1. Definition. For the purposes of this section, "grandparent" means the biological or adoptive parent of the child's biological or adoptive parent. "Grandparent" includes the parent of a child's parent whose parental rights have been terminated, but only until the child is placed for adoption.

2. Petition. A grandparent of a child may petition the court for standing and intervenor status in any child protection proceeding under this chapter. The standing and intervenor status is limited to that proceeding unless otherwise ordered by the court.

3. Criteria. The court shall grant standing and intervenor status when the court finds that the grandparent has an existing relationship or has made sufficient effort to establish a relationship with the child, that that status would be in the best interests of the child and that that status would also be consistent with the purposes of this chapter as set forth in section 4003.

4. Request for placement. In any proceeding when standing and intervenor status have been granted, the grandparent may request the court to order that the child be placed with the grandparent. In making a decision on the request, the court shall give the grandparents priority for consideration for placement if that placement is in the best interests of the child and consistent with the purposes listed in section 4003.

5. Procedure if child in jeopardy. Nothing in this section limits the department from removing the child from the grandparent's home if the child is in jeopardy.

6. Reasonable rights of visitation or access. In any proceeding in which standing and intervenor status have been granted, the grandparent may request the court to grant the grandparent reasonable rights of visitation or access. When a child is placed in the prospective adoptive home and the prospective adoptive parents have signed an adoptive placement agreement, a grandparent's right to contact or have access to the child that was granted pursuant to

this chapter is suspended. If the adoption is not final within 18 months of adoptive placement, then the grandparent whose rights of contact or access were suspended may resume, as a matter of right and without further court order, contact with the child in accordance with the order granting that contact or access, unless the court determines, after a hearing, that the contact is not in the child's best interest. A grandparent's rights of visitation or access terminate when the adoption is finalized pursuant to Title 18-A, section 9-308. Nothing in this section prohibits prospective adoptive parents from independently facilitating or permitting contact between a child and a grandparent, especially when rights of contact have been previously ordered by a court.

§ 4005-C. Rights of persons who are not parties (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child must be provided notice of and an opportunity to be heard in any review or hearing to be held with respect to the child. The right to be heard includes the right to testify but does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records. This section may not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to the review or hearing solely on the basis of the notice and opportunity to be heard.

(TEXT EFFECTIVE UNTIL 7/1/00) The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child may attend a review or hearing in its entirety under this section unless specifically excluded by decision of the presiding judge.

This paragraph is repealed July 1, 2000.

§ 4006. Appeals

A party aggrieved by an order of a court entered pursuant to section 4035, 4054 or 4071 may appeal directly to the Supreme Judicial Court sitting as the Law Court and such appeals are

governed by the Maine Rules of Civil Procedure, chapter 9.

Appeals from any order under section 4035, 4054 or 4071 must be expedited. Any attorney appointed to *represent a party in a* District Court proceeding under this chapter shall continue to represent that client in any appeal unless otherwise ordered by the court.

Orders entered under this chapter under sections other than section 4035, 4054 or 4071 are interlocutory and are not appealable.

§ 4007. Conducting proceedings

1. Procedures. All child protection proceedings shall be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. All the proceedings shall be recorded. All proceedings and records shall be closed to the public, unless the court orders otherwise.

2. Interviewing children. The court may interview a child witness in chambers, with only the guardian ad litem and counsel present, provided that the statements made are a matter of record. The court may admit and consider oral or written evidence of out-of-court statements made by a child, and may rely on that evidence to the extent of its probative value.

3. Motion for examination. At any time during the proceeding, the court may order that a child, parent, alleged parent, person frequenting the household or having custody at the time of the alleged abuse or neglect, any other party to the action or person seeking care or custody of the child be examined pursuant to the Maine Rules of Civil Procedure, Rule 35.

3-A. Report of licensed mental health professional. In any hearing held in connection with a child protection proceeding under this chapter, the written report of a licensed mental health professional who has treated or evaluated the child shall be admitted as evidence, provided that the party seeking admission of the written report has furnished a copy of the report to all parties at least 21

days prior to the hearing. The report shall not be admitted as evidence without the testimony of the mental health professional if a party objects at least 7 days prior to the hearing. This subsection does not apply to the caseworker assigned to the child.

4. Interstate Compact on Placement of Children. The provisions of the Interstate Compact on Placement of Children, sections 4191 to 4247, shall apply to proceedings under this chapter. Any report submitted pursuant to the compact shall be admissible in evidence for purposes of indicating compliance with the compact and the court may rely on evidence to the extent of its probative value.

5. Records. Records released by the department pursuant to section 4008 shall be used only for the purposes for which that release was intended.

6. Benefits and support for children in custody of department. When a child has been ordered into the custody of the department under this chapter, Title 15, chapter 507 or Title 19-A, chapter 55, within 30 days of the order, each parent shall provide the department with information necessary for the department to make a determination regarding the eligibility of the child for state, federal or other 3rd-party benefits and shall provide any necessary authorization for the department to apply for these benefits for the child.

Prior to a hearing under section 4034, subsection 4, section 4035 or section 4038, each parent shall file income affidavits as required by Title 19-A, sections 2002 and 2004 unless current information is already on file with the court. If a child is placed in the custody of the department, the court shall order child support from each parent according to the guidelines pursuant to Title 19-A, chapter 63, designate each parent as a nonprimary care provider and apportion the obligation accordingly.

Income affidavits and instructions must be provided to each parent by the department at the time of service of the petition or motion. The court may order a deviation pursuant to Title 19-A, section 2007. Support ordered pursuant to this section must be paid directly to the department pursuant to Title 19-A, chapter 65, subchapter

IV. The failure of a parent to file an affidavit does not prevent the entry of a protection order. A parent may be subject to Title 19-A, section 2004, subsection 1, paragraph D for failure to complete and file income affidavits.

§ 4008. Records; confidentiality; disclosure

1. Confidentiality of records. All department records which contain personally identifying information and are created or obtained in connection with the department's child protective activities and activities related to a child while in the care or custody of the department are confidential and subject to release only under the conditions of subsections 2 and 3. Within the department, the records shall be available only to and used by appropriate departmental personnel and legal counsel for the department in carrying out their functions.

2. Optional disclosure of records. The department may disclose relevant information in the records to the following persons:

A. An agency or person investigating or participating on a team investigating a report of child abuse or neglect when the investigation or participation is authorized by law or by an agreement with the department;

B. [1983, c. 327, §3 (rp).]

C. A physician treating a child whom he reasonably suspects may be abused or neglected;

D. A child named in a record who is reported to be abused or neglected, or the child's parent or custodian, or the subject of the report, with protection for identity of reporters and other persons when appropriate;

E. A person having the legal responsibility or authorization to educate, care for, evaluate, treat or supervise a child, parent or custodian who is the subject of a record, or a member of a panel appointed by the department to review child deaths and serious injuries. This includes a member of a treatment team or group

convened to plan for or treat a child or family that is the subject of a record. This may also include a member of a support team for foster parents, if that team has been reviewed and approved by the department;

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the researcher and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact;

G. Any agency or department involved in licensing or approving homes for, or the placement of, children or dependent adults, with protection for identity of reporters and other persons when appropriate;

H. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857;

I. The representative designated to provide child welfare services by the tribe of an Indian child as defined by the federal Indian Child Welfare Act, 25 United States Code, Section 1903; and J. A person making a report of suspected abuse or neglect. The department may only disclose that it has not accepted the report for investigation, unless other disclosure provisions of this section apply.

3. Mandatory disclosure of records. The department shall disclose relevant information in the records to the following persons:

A. The guardian ad litem of a child named in a record who is reported to be abused or neglected;

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a home study from the department pursuant to Title 18-A, section 9-304 or Title 19-A, section 905.

Access to such a report or record is limited to counsel of record unless otherwise ordered by the court. Access to actual reports or

records is limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before the court;

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business;

D. An appropriate state executive or legislative official with responsibility for child protection services or the Child Welfare Services Ombudsman in carrying out his official functions, provided that no personally identifying information may be made available unless necessary to his functions;

E. The protection and advocacy agency for persons with disabilities, as designated pursuant to Title 5, section 19502, in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency;

F. The Commissioner of Education when the information concerns teachers and other professional personnel issued certificates under Title 20-A, persons employed by schools approved pursuant to Title 20-A or any employees of schools operated by the Department of Education; and

G. The prospective adoptive parents. Prior to a child being placed for the purpose of adoption, the department shall comply with the requirements of Title 18-A, section 9-304, subsection (b) and section

3-A. Confidentiality. The proceedings and records of the child death and serious injury review panel created in accordance with section 4004, subsection 1, paragraph E are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commissioner shall disclose conclusions of the review panel upon request, but may not disclose data that is otherwise classified as confidential.

4. Unlawful dissemination; penalty. A person is guilty of

unlawful dissemination if he knowingly disseminates records which are determined confidential by this section, in violation of the mandatory or optional disclosure provisions of this section. Unlawful dissemination is a Class E crime, which, notwithstanding Title 17-A, section 1252, subsection 2, paragraph E, is punishable by a fine of not more than $500 or by imprisonment for not more than 30 days.

5. Retention of unsubstantiated child protection services records. Except as provided in this subsection, the department shall retain unsubstantiated child protective services case records for no more than 18 months following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives unless a new referral has been received within the 18-month retention period. Unsubstantiated child protective services records of persons who were eligible for Medicaid services under the Federal Social Security Act, Title XIX, at the time of the investigation may be retained for up to 5 years for the sole purpose of state and federal audits of the Medicaid program. Unsubstantiated child protective services case records retained for audit purposes pursuant to this subsection must be stored separately from other child protective services records and may not be used for any other purpose.

§ 4008-A. Child abuse and neglect investigations; disclosure

1. Disclosure permitted. Notwithstanding any other provision of law, the commissioner, with the advice of the Attorney General, may disclose information as set forth in this section regarding the abuse or neglect of a child and the investigation of and any services related to the abuse and neglect if the commissioner determines that such disclosure is not contrary to the best interests of the child, the child's siblings or other children in the household and any one of the following factors is present:

A. The alleged perpetrator of the abuse or neglect has been charged with committing a crime related to the allegation of abuse or neglect maintained by the department;

B. A judge, a law enforcement agency official, a district attorney or another state or local investigative agency or official has publicly disclosed, as required by law in the performance of official duties, the provision of child welfare services or the investigation by child welfare services of the abuse or neglect of the child;

C. An individual who is the parent, custodian or guardian of the victim or a child victim over 14 years of age has made a prior knowing, voluntary, public disclosure; or

D. The child named in the report has died.

2. Information. For the purposes of this section, the following information may be disclosed:

A. The name and age of the abused or neglected child. If the child is under 13 years of age, the guardian ad litem must agree with the commissioner to release the information. If the child is 13 years of age or older, the guardian ad litem and the child must agree with the commissioner to release the information;

B. The determination by the local child protective service or the state agency that investigated the alleged abuse or neglect and the findings of the applicable investigating agency upon which the determination was based;

C. Identification of child protective or other services provided or actions, if any, taken regarding the child and the child's family;

D. Whether any report of abuse or neglect regarding the child has been substantiated as maintained by the department;

E. Any actions taken by child protective services in response to reports of abuse or neglect of the child to the department, including, but not limited to, actions taken after every report of abuse or neglect of the child and the dates of the reports;

F. Whether the child or the child's family has received care or services from the child welfare services prior to every report of

abuse or neglect of the child; and

G. Any extraordinary or pertinent information concerning the circumstances of the abuse or neglect of the child and the investigation of the abuse or neglect, if the commissioner determines the disclosure is consistent with the public interest.

3. Limitations. The following limitations apply to information disclosed pursuant to this section.

A. Information released prior to the completion of the investigation of a report must be limited to a statement that a report is under investigation.

B. If there has been a prior disclosure pursuant to paragraph A, information released in a case in which the report has not been substantiated is limited to the statement that the investigation has been completed and the report has not been substantiated.

C. If the report has been substantiated, information may be released pursuant to subsection 2.

D. The disclosure may not identify or provide any identifying description of the source of the report, and may not identify the name of the abused or neglected child's siblings, the parent or other person legally responsible for the child or any other members of the child's household, other than the subject of the report.

4. Considerations. In determining pursuant to subsection 1 whether disclosure would be contrary to the best interests of the child, the child's siblings or other children in the household, the commissioner shall consider the privacy of the child and the child's family and the effects that disclosure may have on efforts to reunite and provide services to the family.

5. Other releases and disclosure. Except as it applies directly to the cause of the abuse or neglect of the child, nothing in this section authorizes the release or disclosure of the substance or content of

any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or similar materials or information pertaining to the child or the child's family.

§ 4009. Penalty for violations

A person who knowingly violates a provision of this chapter commits a civil violation for which a forfeiture of not more than $500 may be adjudged.

§ 4010. Spiritual treatment

1. Treatment not considered abuse or neglect. Under subchapters I to VII, a child shall not be considered to be abused or neglected, in jeopardy of health or welfare or in danger of serious harm solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization.

2. Treatment to be considered if requested. When medical treatment is authorized under this chapter, treatment by spiritual means by an accredited practitioner of a recognized religious organization may also be considered if requested by the child or his parent.

§ 4010-A. Child abuse policies

1. Policy development. Every public or private agency or program that is administered, licensed or funded by the Department of Human Services, the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Department of Corrections and hires staff or selects volunteers and provides care or services for children shall develop a written policy regarding child abuse and neglect.

The policy shall include:

A. A description of how the program and children shall be managed to prevent abuse or neglect;

B. The reporting of suspected abuse or neglect or other

violations to the appropriate designated authorities;

C. The agency's course of action if allegations of abuse or neglect are made against the agency or its staff; and

D. The agency's grievance procedures for staff, and for children and their parents or guardians regarding alleged abuse or neglect.

2. Filing. The agency shall file the policy as part of its application for licensure or renewal with the state entity that regulates the agency within one year of the effective date of this subsection or of the date the agency comes into existence.

3. Availability of policy. The agency shall make the policy available to its staff, clients and the public.

§ 4011. Persons mandated to report suspected abuse or neglect

1. Reasonable cause to suspect. When, while acting in a professional capacity, an adult who is a medical or osteopathic physician, resident, intern, emergency medical services person, medical examiner, physician's assistant, dentist, dental hygienist, dental assistant, chiropractor, podiatrist, registered or licensed practical nurse, teacher, guidance counselor, school official, children's summer camp administrator or counselor, social worker, court appointed special advocate or guardian ad litem for the child, homemaker, home health aide, medical or social service worker, psychologist, child care personnel, mental health professional, law enforcement official, state fire inspector, municipal code enforcement official, municipal fire inspector, commercial film and photographic print processor, clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications or chair of a professional licensing board that has jurisdiction over mandated reporters knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected, that person shall immediately report or cause a report to be made to the department.

A. Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person shall immediately notify either the person in charge of the institution, agency or facility, or a designated agent, who shall then cause a report to be made. The staff may also make a report directly to the department.

B. Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected.

C. [1985, c. 495, §19 (rp).]

D. When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child, the person shall immediately report or cause a report to be made to the appropriate district attorney's office.

1-A. Mental health treatment. When a licensed mental health professional is required to report under subsection 1, and the knowledge or reasonable cause to suspect that a child has been or is likely to be abused or neglected comes from treatment of a person responsible for the abuse or neglect, the licensed mental health professional shall report to the department in accordance with subsection 1 and under the following conditions.

A. The department shall consult with the licensed mental health professional who has made the report and shall attempt to reach agreement with the professional as to how the report is to be pursued. If agreement is not reached, the licensed mental health professional may request a meeting under paragraph B.

B. Upon the request of the licensed mental health professional who has made the report, after the department has completed its investigation of the report under section 4021 or has received a preliminary protection order under section 4034 and where the department plans to initiate or has initiated a final protection action

under section 4035 or plans to refer or has referred the report to law enforcement officials, the department shall convene at least one meeting of the licensed mental health professional who made the report, at least one representative from the department, a licensed mental health professional with expertise in child abuse or neglect and a representative of the district attorney's office having jurisdiction over the report, unless that office indicates that prosecution is unlikely.

C. The persons meeting under paragraph B shall make recommendations regarding treatment and prosecution of the person responsible for the abuse or neglect. The persons making the recommendations shall take into account the nature, extent and severity of abuse or neglect, the safety of the child and the community and needs of the child and other family members for treatment of the effects of the abuse or neglect and the willingness of the person responsible for the abuse or neglect to engage in treatment. The persons making the recommendations may review or revise these recommendations at their discretion.

The intent of this subsection is to encourage offenders to seek and effectively utilize treatment, at the same time providing any necessary protection and treatment for the child and other family members.

2. Photographs of visible trauma. Whenever a person is required to report as a staff member of a law enforcement agency or a hospital, he shall make reasonable efforts to take, or cause to be taken, color photographs of any areas of trauma visible on a child.

A. The taking of photographs shall be done in a manner consistent with professional standards, including minimizing trauma. The parent's or custodian's consent to the taking of photographs shall not be required.

B. Photographs shall be made available to the department as soon as possible. The department shall pay the reasonable costs of the photographs from funds appropriated for child welfare services.

C. The person shall notify the department as soon as possible if

he is unable to take, or cause to be taken, these photographs.

D. Designated agents of the department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse or neglect, or to subsequent child protection proceedings.

§ 4012. Reporting procedures

1. Immediate report. Reports regarding abuse or neglect shall be made immediately by telephone to the department and shall be followed by a written report within 48 hours if requested by the department.

2. Information required. The reports shall include the following information if within the knowledge of the person reporting:

A. The name and address of the child and the persons responsible for his care or custody;

B. The child's age and sex;

C. The nature and extent of abuse or neglect, including a description of injuries and any explanation given for them;

D. A description of sexual abuse or exploitation;

E. Family composition and evidence of prior abuse or neglect of the child or his siblings;

F. The source of the report, the person making the report, his occupation and where he can be contacted;

G. The actions taken by the reporting source, including a description of photographs or x rays taken; and

H. Any other information that the person making the report believes may be helpful.

§ 4013. Mandatory reporting to medical examiner for postmortem investigation

A person required to report cases of known or suspected abuse or neglect, who knows or has reasonable cause to suspect that a child has died as a result of abuse or neglect, shall report that fact to the appropriate authority as provided in section 3026. A child shall not be considered to be abused or neglected solely because he was provided with treatment by spiritual means by an accredited practitioner of a recognized religious organization.

§ 4014. Immunity from liability

1. Reporting and proceedings. A person, including an agent of the department, participating in good faith in reporting under this subchapter or participating in a related child protection investigation or proceeding, including, but not limited to, a multidisciplinary team, out-of-home abuse investigating team or other investigating or treatment team, is immune from any criminal or civil liability for the act of reporting or participating in the investigation or proceeding. Good faith does not include instances when a false report is made and the person knows the report is false. Nothing in this section may be construed to bar criminal or civil action regarding perjury or regarding the abuse or neglect which led to a report, investigation or proceeding.

2. Photographs and x rays. A person participating in good faith in taking photographs or x rays under this subchapter is immune from civil liability for invasion of privacy that might otherwise result from these actions.

3. Presumption of good faith. In a proceeding regarding immunity from liability, there shall be a rebuttable resumption of good faith.

§ 4015. Privileged or confidential communications

The husband-wife and physician and psychotherapist-patient privileges under the Maine Rules of Evidence and the confidential quality of communication under Title 20-A, sections 4008 and

6001, to the extent allowed by applicable federal law; Title 24-A, section 4224; Title 32, sections 1092-A and 7005; and Title 34-B, section 1207, are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving evidence in a child protection proceeding. Information released to the department pursuant to this section shall be kept confidential and may not be disclosed by the department except as provided in section 4008.

Statements made to a licensed mental health professional in the course of counseling, therapy or evaluation where the privilege is abrogated under this section may not be used against the client in a criminal proceeding except to rebut the client's testimony contradicting those statements. Nothing in this section may limit any responsibilities of the professional pursuant to this Act.

§ 4016. Confidentiality of employee records

Notwithstanding Title 5, section 554, subsection 2, paragraph E or any other provision of law, the confidentiality of employee records is abrogated in relation to required reporting, cooperating with the department or guardian ad litem in an investigation or other child protective activity or giving evidence in a child protective proceeding.

§ 4017. Discrimination

No person may be discriminated against by any employer in any way for participating in good faith in reporting under this subchapter or in a related child protection investigation or proceeding.

§ 4021. Investigations

1. Subpoenas and obtaining criminal history. The commissioner, his delegate or the legal counsel for the department may:

A. Issue subpoenas requiring persons to disclose or provide to the department information or records in their possession that are necessary and relevant to an investigation of a report of suspected abuse or neglect, to a subsequent child protection proceeding or to a panel appointed by the department to review child deaths and serious injuries.

(1) The department may apply to the District Court to enforce a subpoena.

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department; and

B. Obtain nonconviction data and other criminal history record information under Title 16, section 611, et seq., which he deems relevant to an abuse or neglect case.

2. Confidentiality. Information or records obtained by subpoena shall be treated in accordance with section 4008.

3. Interviewing the child without prior notification. The department may interview a child without prior notification under the following provisions.

A. The department may interview a child without prior notification to the parent or custodian when the department has reasonable grounds to believe that prior notice would increase the threat of serious harm to the child or another person. The department may conduct one initial interview with a child without prior notification to the parent or custodian of the child when the child contacts the department or a person providing services puts the child into contact with the department.

B. The interview may take place at a school, hospital, police

station or other place where the child is present.

C. School officials shall permit the department to meet with and interview the child during school hours, if the interview is necessary to carry out the department's duties under this chapter.

§ 4022. Voluntary care

On the written request of a person responsible for the child, the department may care for that child for a specified period by agreement, unless a custodian objects. Voluntary care agreements shall not affect custody. The department may require reimbursement from a parent or custodian for these services.

§ 4023. Short-term emergency services

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Agency" means a person with a contract or written agreement with the department to provide short-term emergency services.

B. "Short-term emergency services" means protective services, emergency shelter care, counseling, emergency medical treatment and other services which are essential to the care and protection of a child. These services may include
emergency caretaker or homemaker services in the child's home or care outside his home when no parent or other responsible adult is available and willing to care for the child in his home.

2. Authorization. The department may provide short-term emergency services, directly or through contracts or written agreements with agencies, to a child who has been or appears to be:

A. Threatened with serious harm;

B. A runaway from the child's parents or custodian;

C. Without any person responsible for the child; or

D. Taken into interim care under Title 15, section 3501, by a law enforcement officer.

3. Consent to treatment. The department may give consent for the child to receive necessary emergency medical treatment while receiving short-term emergency services. When the department has given its consent, a physician or health care provider shall be immune from civil liability for providing emergency medical treatment without the informed consent of the child or the child's parents or custodian.

4. Contacting parents. The following procedures shall apply.

A. Prior to or on initiating short-term emergency services, the department or agency shall take reasonable steps to notify a custodian that the child will receive or is receiving the services. Notwithstanding this subsection, shelters for homeless children, as defined in section 8101, subsection 4-A, are governed by the parental notification requirements contained in the Department of Human Services rules for the licensure of shelters for homeless children.

B. Short-term emergency services, except for medical treatment, shall not be provided to a child who expresses a clear desire not to receive them.

C. If a parent or custodian objects to medical treatment, it shall be discontinued within 6 hours of receiving the objection.

5. Time limit. Short-term emergency services shall not exceed 72 hours from the time of the department's assumption of responsibility for the child. Notwithstanding this subsection, shelters for homeless children, as defined in section 8101, subsection 4-A, are governed by the time-limit requirements contained in the Department of

Human Services rules for the licensure of shelters for homeless children.

6. Parent's obligations. Providing short-term emergency services to a child shall not affect a parent's obligation for the support of the child.

7. Reimbursement. The department may, by agreement or court order, obtain reimbursement from a parent for the support of a child who receives short-term emergency services. An agency may also obtain reimbursement from a parent subject to its contract or written agreement with the department.

§ 4024. Department responsible for required services

If the department requires that a child receive mental health services or other medical services as an alternative to the initiation of a child protection proceeding, the department shall inform the person responsible for the child that the services must be approved by the department. If the person responsible for the child's medical expenses is unable to pay for the services required, the department shall inform the person responsible for the child that the department will pay for the services if the services are approved by the department.

§ 4031. Jurisdiction; venue

1. Jurisdiction. The following provisions shall govern jurisdiction.

A. The District Court shall have jurisdiction over child protection petitions.

B. The Probate Court and the Superior Court shall have concurrent jurisdiction to act on requests for preliminary child

protection orders under section 4034. As soon as the action is taken by the Probate Court or the Superior Court, the matter shall be transferred to the District Court.

C. [1989, c. 270, §12 (rp).]

D. The District Court has jurisdiction over judicial reviews transferred to the District Court pursuant to Title 18-A, section 9-205.

2. Venue.

A. Petitions shall be brought in the district where the child legally resides or where the child is present. When a child is in voluntary placement with the department or an agency, the petition may be brought only in the district where he legally resides.

B. The court, for the convenience of the parties or in the interests of justice, may transfer the petitions to another district or division.

C. A judge from another district, division or county may hear a petition and make a preliminary or final protection order if no judge is available in the district and division in which the petition is filed.

3. Scope of authority. The court shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody. The requirements and provisions of Title 19-A, chapter 58 do not apply to child protection proceedings. If custody is an issue in another pending proceeding, the proceedings may be consolidated in the District Court with respect to the custody issue. In any event, the court shall make an order on the child protection petition in accordance with this chapter. That order takes precedence over any prior order regarding the child's care and custody.

§ 4032. Child protection petition, petitioners, content, filing

1. Who may petition. Petitions may be brought by:

A. The department through an authorized agent;

B. A police officer or sheriff; or

C. Three or more persons.

2. Contents of petition. A petition shall be sworn and shall include at least the following:

A. Name, date, place of birth and municipal residence, if known, of each child;

B. The name and address of the petitioner and the nature of his relationship to the child;

C. Name and municipal residence, if known, of each parent and custodian;

D. A summary statement of the facts which the petitioner believes constitute the basis for the petition;

E. An allegation which is sufficient for court action;

F. A request for specific court action;

G. A statement that the parents and custodians are entitled to legal counsel in the proceedings and that, if they want an attorney but are unable to afford one, they should contact the court as soon as possible to request appointed counsel; and H. A statement that petition proceedings could lead to the termination of parental rights, under section 4051 et seq.

3. Hearing date. On the filing of a petition, the court shall set the earliest practicable time and date for a hearing.

§ 4033. Service and notice

1. Petition service. A child protection petition shall be served as follows:

A. The petition and a notice of hearing shall be served on the parents and custodians, the guardian ad litem for the child and any other party at least 10 days prior to the hearing date. A party may waive this time requirement if the waiver is written and voluntarily and knowingly executed in court before a judge. Service shall be made in accordance with the District Court Civil Rules.

B. If the department is not the petitioner, the petitioner shall serve a copy of the petition and notice of hearing on the State.

2. Notice of preliminary protection order. If there is to be a request for a preliminary protection order, the petitioner shall, by any reasonable means, attempt to notify the parents and custodians of his intent to request that order and of the time and place at which he will make the request. This notice is not required if the petitioner includes in the petition a sworn statement of his belief that:

A. The child would suffer serious harm during the time needed to notify the parents or custodians; or

B. Prior notice to the parents or custodians would increase the risk of serious harm to the child or petitioner.

3. Service of preliminary protection order. If the court makes a preliminary protection order, a copy of the order shall be served on the parents and custodians by:

A. In-hand delivery by the judge or court clerk to any parent, custodian or their counsel who is present when the order is made;

B. Service in accordance with the Maine Rules of Civil Procedure. Notwithstanding the Maine Rules of Civil Procedure,

the court may waive service by publication of a preliminary protection order for a party whose whereabouts are unknown if the department shows by affidavit that diligent efforts have been made to locate the party; or

C. Another manner ordered by the court.

3-A. Information provided to parents. When the court makes a preliminary protection order on a child who is physically removed from his parents or custodians, the following information shall be provided to the parents or custodians in written form by the petitioner at the time of removal of the child:

A. The assigned caseworker's name and work telephone number;

B. The location where the child will be taken; and

C. A copy of the complete preliminary protection order.

This information is not required if the petitioner includes in the petition a sworn statement of his belief that providing the information would cause the threat of serious harm to the child, the substitute care giver, the petitioner or any other person.

4. Service of final protection order. The court shall deliver in-hand at the court, or send by ordinary mail promptly after it is entered, a copy of the final protection order to the parent's or custodian's counsel or, if no counsel, to the parents or custodians. The copy of the order shall include a notice to them of their rights under section 4038. Lack of compliance with this subsection does not affect the validity of the order.

5. Notice to foster parents, preadoptive parents and relatives providing care. The department shall provide written notice of all

reviews and hearings in advance of the proceeding to foster parents, preadoptive parents and relatives providing care. The notice must be dated and signed, must include a statement that foster parents, preadoptive parents and relatives providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing.

§ 4034. Request for a preliminary protection order

1. Request. A petitioner may add to a child protection petition a request for a preliminary protection order, which shall include a sworn summary of facts to support the request.

2. Order. If the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under section 4036. A preliminary protection order shall automatically expire at the time of the issuing of a final protection order under section 4035.

3. Custodial consent. If the custodian consents in writing and the consent is voluntarily and knowingly executed in court before a judge, or the custodian does not appear after proper notice has been given, then the hearing on the preliminary protection order need not be held, except as provided in subsection 4.

4. Summary preliminary hearing. If the custodial parent appears and does not consent, or if a noncustodial parent requests a hearing,

then the court shall hold a summary preliminary hearing on that order within 10 days of its issuance or request. If a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian may request a subsequent preliminary hearing within 10 days after receipt of the petition. The petitioner bears the burden of proof. At a summary preliminary hearing, the court may limit testimony to the testimony of the caseworker, parent, custodian, guardian ad litem, foster parent, preadoptive parent or relative providing care and may admit evidence, including reports and records, that would otherwise be inadmissable as hearsay evidence. If after the hearing the court finds by a preponderance of the evidence that returning the child to the child's custodian would place the child in immediate risk of serious harm, it shall continue the order or make another disposition under section 4036. If the court's preliminary order includes a finding of an aggravating factor, the court may order the department not to commence reunification or to cease reunification, in which case a permanency planning hearing must commence within 30 days of entry of the preliminary order.

5. Contents of order. The order must include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G and, if the order was made without consent, notice of the date and time of the summary preliminary hearing. The order must include a notice to the parent or custodian that if a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian is entitled to request a subsequent preliminary hearing within 10 days after receipt of the petition.

§ 4035. Hearing on jeopardy order petition

1. Hearing required. The court shall hold a hearing prior to making a jeopardy order.

2. Adjudication. After hearing evidence, the court shall make a finding, by a preponderance of the evidence, whether the child is in circumstances of jeopardy to his health or welfare.

3. Grounds for disposition. If the court determines that the child is in circumstances of jeopardy to his health or welfare, the court shall hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans. The court shall then make a written order of any disposition under section 4036. If possible, this dispositional phase shall be conducted immediately after the adjudicatory phase. Written materials to be offered as evidence shall be made available to each party's counsel and the guardian ad litem reasonably in advance of the dispositional phase.

4. Final protection order.

4-A. Jeopardy order. The court shall issue a jeopardy order within 120 days of the filing of the child protection petition.

This time period does not apply if good cause is shown. Good cause does not include a scheduling problem.

§ 4036. Disposition and principles

1. Disposition. In a protection order, the court may order one or more of the following:

A. No change in custody;

B. Departmental supervision of the child and family in the child's home;

C. That the child, the custodians, the parents and other appropriate family members accept treatment or services to ameliorate the circumstances related to the jeopardy;

D. Necessary emergency medical treatment for the child when the custodians are unwilling or unable to consent;

E. Emancipation of the child, if the requirements of Title 15,

section 3506-A are met;

F. Removal of the child from his custodian and granting custody to a noncustodial parent, other person or the department;

F-1. Removal of the perpetrator from the child's home, prohibiting direct or indirect contact with the child by the perpetrator and prohibiting other specific acts by the perpetrator which the court finds may threaten the child;

G. Payment by the parents of a reasonable amount of support for the child as determined or modified according to Title 19-A, chapter 63;

G-1. [1997, c. 715, Pt. A, §10 (rp).]

G-2. If the court's jeopardy order includes a finding of an aggravating factor, the court may order the department to cease reunification, in which case a permanency planning hearing must commence within 30 days of the order to cease reunification.

H. Other specific conditions governing custody; or

I. The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title 19-A, section 4014.

2. Principles. In determining the disposition, the court shall apply the following principles in this priority:

A. Protect the child from jeopardy to his health or welfare;

B. Give custody to a parent if appropriate conditions can be applied;

C. Make disposition in the best interests of the child; and

D. Terminate department custody at the earliest possible time.

3. Time of order. The order may be for a specified period, with a review at the end of that period, or it may be for an indeterminate period, not beyond age 18.

4. Disposition of child in custody of department. The court may not order that a child who has been ordered into the custody of the department be placed with a parent. Nothing in this subsection prevents the department from placing a child in its custody in the home of a parent for a trial period.

5. Notice of criminal penalties. If an order is issued under this section that contains a provision subject to criminal penalties under section 4036-A, the order must indicate in a clear and conspicuous manner the potential consequences of violating the order.

§ 4036-A. Criminal penalty

1. Definition. For purposes of this section, "order" means an order entered in a case filed pursuant to this chapter.

2. Crime committed. When disposition under section 4036 includes a provision that a party named in a petition not have contact with a child or children named in the petition or a provision that a party named in the petition not enter the residence of a child or children named in the petition, and the party has prior actual notice of the order containing those provisions, violation of that provision is a Class D crime. The criminal sanctions in this subsection are in addition to and not in lieu of contempt powers of the court.

3. Warrantless arrest. Notwithstanding any statutory provision to the contrary, an arrest for criminal violation of an order may be without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law

enforcement officer may verify, if necessary, the existence of an order by telephone or radio communication with an agency with knowledge of the order.

§ 4037. Authority of custodian

When custody of the child is ordered to the department or other custodian under a preliminary or final protection order, the custodian has full custody of the child subject to the terms of the order and other applicable law. Custody does not include the right to initiate adoption proceedings without parental consent, except as provided under Title 18-A, section 9-302.

§ 4038. Mandated review; review on motion

1. Mandated review. If a court has made a jeopardy order, it shall review the case at least once every 6 months, unless the child has been emancipated or adopted.

1-A. No mandated review. Notwithstanding subsection 1, no subsequent judicial review is required unless petitioned for by any party or unless specifically ordered by the court:

A. When custody has been granted to a person other than a parent or the department;

B. When custody has been granted to a parent who did not have custody at the time the child protection petition was filed;

C. When the child lives with the foster parent with whom the department has entered into a long-term foster care agreement pursuant to section 4064; or

D. When there is a signed adoptive placement agreement regarding the child between the department and the prospective parent or parents.

2. Review on motion. The court, the child's parent, custodian or guardian ad litem or a party to the proceeding, except a parent

whose rights have been terminated under subchapter VI, may move for judicial review. The moving party shall have the burden of going forward.

3. Notice of review. Notice of the reviews must be given to all parties to the initial proceeding according to District Court Civil Rule 4. Notice may not be given to a parent whose rights have been terminated under subchapter VI. The department shall provide written notice of all reviews and hearings in advance of the proceeding to the foster parent, preadoptive parent and relative providing care. The notice must be dated and signed, must include a statement that the foster parent, preadoptive parent and relative providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing.

4. Disposition. 1985, c. 739, §13 (rp).]

5. Hearing. The court shall hear evidence and shall consider the original reason for the adjudication and disposition under sections 4035 and 4036, the events that have occurred since then and the efforts of the parties as set forth under section 4041 and shall consider the effect of a change in custody on the child.

6. Disposition. The court may make any further order, based on a preponderance of evidence, that is authorized under section 4036.

A. [1989, c. 270, §13 (rp).]

B. [1989, c. 270, §13 (rp).]

C. [1989, c. 270, §13 (rp).]

7. Review of child in custody of the department.

7-A. Permanency planning hearing. The court shall conduct a permanency planning hearing and shall determine a permanency plan within 12 months of the time a child is considered to have entered foster care and every 12 months thereafter. If the court's jeopardy ruling includes a finding of an aggravating factor, the court may order the department to cease reunification, in which case a permanency planning hearing must commence within 30 days of the order to cease reunification.

A. A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or on the 60th day after removal of the child from home, whichever occurs first.

B. The permanency plan for the child must contain determinations on the following issues.

(1) The permanency plan must determine whether and when, if applicable, the child will be:

(a) Returned to the parent. Before the court may enter an order returning the custody of the child to a parent, the parent must show that the parent has carried out the responsibilities set forth in section 4041, subsection 1, paragraph B; that to the court's satisfaction the parent has rectified and resolved the problems that caused the removal of the child from home and any subsequent problems that would interfere with the parent's ability to care for and protect the child from jeopardy; and that the parent can protect the child from jeopardy;

(b) Placed for adoption, in which case the department

shall file a petition for termination of parental rights;

(c) Referred for legal guardianship; or

(d) Placed in another planned permanent living arrangement when the department has documented to the court a compelling reason for determining that it would not be in the best interests of the child to be returned home, be referred for termination of parental rights or be placed for adoption, be placed with a fit and willing relative, or be placed with a legal guardian.

(2) In the case of a child placed in foster care outside the state in which the parents of the child live, the permanency plan must determine whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(3) In the case of a child who is 16 years of age or older, the permanency plan must determine the services needed to assist the child to make the transition from foster care to independent living.

C. The court shall consider, but is not bound by, the wishes of the child in making a determination under this subsection if the child is 12 years of age or older.

§ 4038-A. Transfer to District Court

If a case is transferred to the District Court pursuant to Title 18-A, section 9-205, the court shall conduct a hearing and enter a dispositional order using the same standards as set forth in section 4036. The court after the hearing and entering of a dispositional order shall conduct reviews in accordance with section 4038.

§ 4039. Enforcement of custody orders

When the court has ordered a change in the custody of a child and a person not entitled to custody refuses to relinquish physical custody to the custodian, then, at the request of the department or custodian, a law enforcement officer may take any necessary and reasonable action to obtain physical custody of the child for the

rightful custodian. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the child is there.

§ 4041. Departmental responsibilities

1. Rehabilitation and reunification. A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or on the 60th day after the child is removed from the home, whichever occurs first. When a child is considered to have entered foster care, the responsibility for reunification and rehabilitation of the family must be shared as follows.

A. The department shall:

(1) Develop a rehabilitation and reunification plan, which must include the following:

(a) The reasons for the removal of the child from home;

(b) Any changes that must occur for the child to return home;

(c) Rehabilitation services that must be completed satisfactorily prior to the return home;

(d) Services available to assist the parents in rehabilitating and reunifying with the child, including reasonable transportation within the area in which the child is located for visits if the parents are unable to afford that transportation;

(e) A schedule of visits between the child and the parents when visits are not detrimental to the child's best interests, including any special conditions under which the visits must take place;

(f) A reasonable time schedule for proposed reunification, which is reasonably calculated to meet the child's needs; and

(g) A delineation of the financial responsibilities of the

parents and the department during the reunification process;

(2) Provide the parents with prompt written notice of the following, unless that notice would be detrimental to the best interests of the child:

(a) The child's residence and, when practicable, at least 7 days' advance written notice of a planned change of residence; and

(b) Any serious injuries, major medical care received or hospitalization of the child;

(3) Make good faith efforts to cooperate with the parents in the development and pursuit of the plan;

(4) Periodically review with the parents the progress of the reunification plan and make any appropriate changes in that plan;

(5) Petition for judicial review and return of custody of the child to the parents at the earliest appropriate time; and

(6) Petition for termination of parental rights at the earliest possible time that it is determined that family reunification efforts will be discontinued pursuant to subsection 2 and that termination is in the best interests of the child; b! 1997, c. 715, Pt. B, §11 (amd). ?b

B. Parents are responsible for rectifying and resolving problems that prevent the return of the child to the home and shall take part in a reasonable rehabilitation and reunification plan and shall:

(1) Maintain meaningful contact with the child pursuant to the reunification plan. When a parent has left the area where the child has been placed, this must include making arrangements to visit the child at or near the child's placement;

(2) Seek and utilize appropriate services to assist in rehabilitating and reunifying with the child;

(3) Pay reasonable sums toward the support of the child within the limits of their ability to pay;

(4) Maintain contact with the department, including prompt written notification to the department of any change of address; and

(5) Make good faith efforts to cooperate with the department in developing and pursuing the plan; b! 1997, c. 715, Pt. B, §11 (amd). ?b

C. [1997, c. 715, Pt. B, §11 (rp).]]

C-1. Unless excused for good cause shown, at any hearing held under section 4034, subsection 4 or within 10 days of the filing of the petition if no hearing under section 4034, subsection 4 is held, the department shall present to the court for review a reunification plan, a plan to avoid removal of the child from home or decision not to commence reunification. In the presentation to the court, the department shall include information about other parents or relatives with whom the child could be placed. Prior to review by the court, the department shall provide a copy of its proposal to counsel for the parents, or to the parents if they have no counsel, and to the guardian ad litem. The court may review the proposal in a hearing that does not allow testimonial evidence with all parties and counsel present or may hold a summary hearing at which the court may limit testimony to the testimony of the caseworker, parent, guardian ad litem, person to whom trial placement was given, foster parents, preadoptive parents or relatives providing care and may admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence; and

D. [1983, c. 772, §5 (rp).]

E. The department may make reasonable efforts to place a child for adoption or with a legal guardian concurrently with reunification efforts.

2. Determination of need to commence or discontinue rehabilitation and reunification efforts. The following provisions

determine when rehabilitation and reunification efforts are not necessary or may be discontinued.

A. [1997, c. 715, Pt. B, §11 (rp).]

A-1. The court may order that the department need not commence or may cease reunification efforts only if the court finds the existence of an aggravating factor or that continuation of reunification efforts is inconsistent with the permanency plan for the child. When 2 placements with the same parent have failed and the child is returned to the custody of the department, the court shall make a finding that continuation of reunification efforts is inconsistent with the permanency plan for the child and order the department to cease reunification unless the parent demonstrates that reunification should be continued and the court determines reunification efforts to be in the best interests of the child.

B. [1997, c. 715, Pt. B, §11 (rp).]

B-1. When the department discontinues efforts to return the child to a parent, it shall give written notice of this decision to that parent at the parent's last known address. This notice must include the specific reasons for the department's decision, the specific efforts the department has made in working with the parent and child and a statement of the parent's rights under section 4038. The department shall seek an order authorizing it to discontinue reunification efforts. Within 10 days of sending written notice of the decision to discontinue reunification efforts, the department shall file a motion for approval of discontinuance of reunification efforts with supporting affidavits. If the parents file a responsive pleading within 21 days, the court shall conduct a summary proceeding in accordance with the provisions of section 4034, subsection 4. If no responsive pleading is filed, the court may hold a summary hearing in accordance with the provisions of section 4034, subsection 4 or may decide the matter without a hearing.

C. If the department discontinues efforts to return the child to a parent but does not seek termination of parental rights, then subsection 1, paragraph A, subparagraph (1), division (e) and

subsection 1, paragraph A, subparagraph (2) still apply.

3. Notice to guardian ad litem. The department shall notify the guardian ad litem, as described in section 4005, of any substantial change in circumstances that may have an impact on the best interests of the child. A substantial change in circumstances includes but is not limited to any change in the child's residence.

§ 4050. Purpose

Recognizing that instability and impermanency are contrary to the welfare of children, it is the intent of the Legislature that this subchapter:

1. Termination of parental rights. Allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts have been discontinued and termination is in the best interest of the child; [1983, c. 772, § 7 (new).]

2. Return to family. Eliminate the need for children to wait unreasonable periods of time for their parents to correct the conditions which prevent their return to the family;

3. Adoption. Promote the adoption of children into stable families rather than allowing children to remain in the impermanency of foster care; and

4. Protect interests of child. Be liberally construed to serve and protect the best interests of the child.

§ 4051. Venue

A petition for termination of parental rights must be brought in the court that issued the final protection order. The court, for the convenience of the parties or other good cause, may transfer the petition to another district or division. A petition for termination of parental rights may also be brought in a Probate Court as part of an adoption proceeding as provided in Title 18-A, article IX, when a child protective proceeding has not been initiated.

§ 4052. Termination petition; petitioners; time filed; contents

1. Petitioner. A termination petition may be brought by the custodian of the child or by the department.

2. Time filed. [1997, c. 715, Pt. B, §13 (rp).]

2-A. Department as petitioner or as party. The department shall file a termination petition or seek to be joined as a party to any pending petition in the following circumstances:

A. A child has been in foster care for 15 of the most recent 22 months. This paragraph does not apply if the department is required to undertake reunification efforts and the department has not provided to the family of the child such services as the department determines to be necessary for the safe return of the child to the child's home consistent with the time period in the case plan; or

B. A court order includes a finding of an aggravating factor and an order to cease reunification.

The department is not required to file a termination petition if the department has chosen to have the child cared for by a relative or the department has documented to the court a compelling reason for determining that filing such a petition would not be in the best interests of the child.

3. Contents of petition. A termination petition shall be sworn and shall include at least the following:

A. The name, date and place of birth and municipal residence, if known, of the child;

B. The name and address of the petitioner and the nature of his relationship to the child;

C. The name and municipal residence, if known, of each of the child's parents;

D. The names and address of the guardian ad litem of the child

in the related child protection proceeding or adoption proceeding;

E. A summary statement of the facts which the petitioner believes constitute the basis for the request for termination;

F. An allegation which is sufficient for termination;

G. A statement of the effects of a termination order; and

H. A statement that the parents are entitled to legal counsel in the termination proceedings and that, if they want an attorney and are unable to afford one, they should contact the court as soon as possible to request appointed counsel.

4. Hearing date. On the filing of a petition, the court shall set a time and date for a hearing.

§ 4053. Service and notice

The petition and the notice of hearing must be served on the parents and the guardian ad litem for the child at least 10 days prior to the hearing date. Service must be made in accordance with the District Court Civil Rules. The department shall provide written notice of all reviews and hearings in advance of the proceeding to foster parents, preadoptive parents and relatives providing care. The notice must be dated and signed, must include a statement that foster parents, preadoptive parents and relatives providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records." [1997, c. 715, Pt. B, §15 (amd).]]

A copy of the notice must be filed with the court prior to the review or hearing. The department shall mail a copy of the petition to all attorneys of record when the petition is filed in court. [1997,

c. 715, Pt. B, §15 (new).]

§ 4054. Hearing on termination petition

The court shall hold a hearing prior to making a termination order.

§ 4055. Grounds for termination

1. Grounds. The court may order termination of parental rights if:

A. One of the following conditions has been met:

(1) Custody has been removed from the parent under:

(a) Section 4035 or 4038;

(b) Title 19-A, section 1502 or 1653; or

(c) Section 3792 prior to the effective date of this chapter; or

(2) The petition has been filed as part of an adoption proceeding in Title 18-A, article IX; and b! 1995, c. 694, Pt. D, §48 (amd); Pt. E, §2 (aff). ?b

B. Either:

(1) The parent consents to the termination. Consent shall be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

(2) The court finds, based on clear and convincing evidence, that:

(a) Termination is in the best interest of the child; and

(b) Either:

(i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs;

(ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child's needs;

(iii) The child has been abandoned; or

(iv) The parent has failed to make a good faith effort to rehabilitate and reunify with the child pursuant to section 4041. b! 1983, c. 772, §8 (amd). ?b

1-A. Rebuttable presumption. The court may presume that the parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs if:

A. The parent has acted toward a child in a manner that is heinous or abhorrent to society or has failed to protect a child in a manner that is heinous or abhorrent to society, without regard to the intent of the parent;

B. The victim of any of the following crimes was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent and the parent has been convicted of:

(1) Murder;

(2) Felony murder;

(3) Manslaughter;

(4) Aiding or soliciting suicide;

(5) Aggravated assault;

(6) Rape;

(7) Gross sexual misconduct or gross sexual assault;

(8) Sexual abuse of minors;

(9) Incest;

(10) Kidnapping;

(11) Promotion of prostitution; or

(12) A comparable crime in another jurisdiction; [1995, c. 481, §3 (amd).]

C. The child has been placed in the legal custody or care of the department, the parent has a chronic substance abuse problem, and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period of time, considering the child's age and the need for a permanent home. The fact that a parent has been unable to provide safe care of a child for a period of 9 months due to substance abuse constitutes a chronic substance abuse problem;

D. The child has been placed in the legal custody or care of the department, the court has previously terminated parental rights to another child who is a member of the same family and the parent continues to lack the ability or willingness to show the court that the parent has sought services that would rehabilitate the parent or the parent can not show evidence that an additional period of services would result in reunification in a time reasonably calculated to meet the needs of the child and the child's need for a permanent home; or

E. The child has been placed in the legal custody or care of the department for at least 9 months, and the parents have been offered or received services to correct the situation but have refused or have

made no significant effort to correct the situation.

2. Primary considerations. In deciding to terminate parental rights, the court shall consider the best interest of the child, the needs of the child, including the child's age, the child's attachments to relevant persons, periods of attachments and separation, the child's ability to integrate into a substitute placement or back into the parent's home and the child's physical and emotional needs.

3. Wishes of child. The court shall consider, but is not bound by, the wishes of a child 12 years of age or older in making an order under this section.

§ 4056. Effects of termination order

1. Parent and child divested of rights. An order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except the inheritence rights between the child and his parent.

2. Only one parent affected. The termination of one parent's rights shall not affect the rights of the other parent.

3. Parent not entitled to participate in adoption proceedings. A parent whose rights have been terminated shall not be entitled to notice of the child's adoption proceedings, nor shall he have any right to object to the adoption or participate in the proceedings.

4. Child not disentitled to benefit. No order terminating parental rights may disentitle a child to benefits due him from any 3rd person, agency, state or the United States; nor may it affect the rights and benefits that a native American derives from his descent from a member of a federally-recognized Indian tribe.

§ 4057. Termination orders of other states

If parental rights have been terminated by judicial order in

another state, the order, unless against the public policy of this State, shall be accorded full faith and credit. [1979, c. 733, § 18 (new).]

§ 4058. Sunset provision

The provision in chapter 1071 dealing with family rehabilitation and reunification shall be reviewed in accordance with the Maine Sunset Act, Title 3, chapter 23, no later than June 30, 1989.

§ 4061. Expenses; reimbursement

1. Department. The department shall care for a child ordered into its custody in licensed or approved family foster homes, in other residential child care facilities or in other living arrangements as appropriate to meet the child's individual needs.

2. Reimbursement. The department may obtain reimbursement for child care expenses from the child's parents according to a support order or agreement.

3. Other custodian. When a child is ordered into the custody of a custodian other than the department, that custodian shall support the child, subject to a support order or agreement.

§ 4062. Payments

1. Payments by department. The department shall provide payments to facilities caring for children to meet the costs of clothing, board and care, within the limits of available funds. The department may establish, by rule, different categories of facilities, levels of need and care and flat-rate or reimbursement methods to distribute these funds. The department may provide child care and travel expense payments to foster and adoptive parents and trainers participating in foster and adoptive parent training programs and volunteers participating in the administrative case review program.

Notwithstanding section 4061, subsection 3, any federally recognized Indian tribe in this State or any Indian foster family

home is eligible for benefits and reimbursement under any state or federally funded program administered by the State for the benefit of Maine children, including, but not limited to, children within the jurisdiction of the Passamaquoddy Tribe or Penobscot Indian Nation under the Indian Child Welfare Act, 25 United States Code, Section 1901, et seq.

2. Unexpended balance. An unexpended balance of funds for these purposes shall not be transferred to another account and shall not lapse.

3. Priority of payments. The department shall ensure that payments for foster care made under this subchapter have the same priority as payments for temporary assistance for needy families pursuant to section 3769, subsection 1.

4. Kinship preference. In the residential placement of a child, the department shall consider giving preference to an adult relative over a non-related caregiver when determining placement for a child, as long as the related caregiver meets all relevant state child protection standards.

§ 4063. Religious faith of placements; parents' request

If the parents of a child in the custody of the department request in writing that the child be placed in a family of the same general religious faith, for foster care or adoption, the department shall do so when a suitable family of that faith can be found. [1979, c. 733, § 18 (new).]

§ 4063-A. Medical and psychological examination

1. Physical examination required. The department shall ensure that a child ordered into its custody receives an appointment for a medical examination by a licensed physician or nurse practitioner within 10 working days after the department's custody of the child commences.

2. Psychological assessment. If the physician or nurse practitioner who performs a physical examination pursuant to

subsection 1 determines that a psychological assessment of the child is appropriate, the department shall ensure that an appointment is obtained for such an assessment within 30 days of the physical examination.

§ 4063-B. Establishment of early counseling

Whenever a child is ordered into the custody of the department under this chapter and the child is not expected to be returned to the home within 21 days, the department shall obtain counseling for the child as soon as possible, unless the department finds that counseling is not indicated.

§ 4064. Long-term foster care

1. Defined. "Long-term foster care" means a foster family placement for a child in the custody of the department in which the department retains custody of the child while delegating to the foster parents the duty and authority to make certain decisions. The placement is intended to continue until the child becomes 18 years old, unless altered or terminated in the best interests of the child.

2. Authority for placement. The department may place in long-term foster care a child in its custody, if:

A. The child has been in foster care for 6 months or parental rights have been terminated;

B. The department has decided that it is not likely that the child can be returned to his parents and has so notified the parents;

C. In the judgment of the department, it is not likely that the child can be placed in an adoptive home;

D. The prospective foster parents have met standards established by the department for a placement; and

E. A written agreement between the foster parents and the department has been completed which specifies the duty and authority delegated by the department to the foster parents and the

rights retained by the department and the parents, and includes an individual plan for the care of the child. A foster child at least 14 years old may participate in the development of the agreement. The department shall, after consultation with the foster parents, review and, if necessary, revise the plan at least once every 6 months.

3. Duty and authority delegated by the department. The foster parents may make the following decisions:

A. Consent to emergency medical treatment;

B. Consent to the application for a driver's license; and

C. Permit travel by the child outside of the State.

4. Rights of department. Except as delegated in this section or by agreement, the department shall retain custody of the child and all custody rights as provided by court order, statute or rule.

5. Rules. The department may adopt rules for long-term foster care placements in accordance with the Maine Administrative Procedure Act, Title 5, section 8001, et seq.
These rules may include, among other things, standards for settings appropriate for long-term foster care, methods of supervising of those settings, procedures for selecting children
and foster parents, methods for establishing and reviewing individual plans, additional rights or powers that may be delegated and requirements or conditions for exercising the delegated authority.

§ 4065. Department's responsibility after death of committed child

If a child in the custody of the department dies, the department shall arrange and pay for a decent burial for the child. If administration of the deceased child's estate is not commenced, within 60 days after the date of death, by an heir or a creditor, then the department may petition the Probate Court to appoint an administrator and settle the estate of the deceased child pursuant to Title 18-A.

APPENDIX G

STATE OF MAINE CUMBERLAND, ss.	PORTLAND DISTRICT COURT CIVIL ACTION DOCKET NO. 96-PC-19
IN RE: BREAUNNA NEWMAN	* MOTION FOR * JUDICIAL REVIEW * IN ORDER TO * AMEND CHILD * PROTECTION * ORDER *

NOW COMES Christina Then, mother of Breaunna Newman, and moves this Court for a Judicial Review in order to restore the Department Human Services's obligation for reunification between Christina and her daughter, Breaunna Newman. In support of this Motion following facts are asserted.

1. On January 26, 1998, this Court issued an Order, by agreement of the parties, which stated in Par. 5:

> The Department is relieved of reunification responsibilities with the parents, Christina Then and Gerald Newman.

2. Christina Then, mother of Breaunna Newman wishes to amend of this Order to read:

> The Department is relieved of reunification responsibilities with the father Gerald Newman.

3. Christina Then agreed to the provision in Par. 5 of said Order on the assumption and belief that a successful reunification between Breaunna Newman and Robert Then would be completed by the end of April, 1998. However, this reunification effort, which was suppose to be "substantially completed" by April 25, 1998 (see Par. 4 of said Order), was not accomplished.

4. At the time that Breaunna was born, Christina Then was 15 years old. At the time that Breaunna Newman was taken into DHS custody, March 7, 1996, Christina Then was 16 years old. She lacked the maturity and the skills to adequately take care for her daughter. She had no job, no high school diploma, and inadequate parenting skills. In April of 1996, Ms. Then left Maine to join her father and her family in Italy. One year later the family moved to Germany. During this time, Christina Then fervently desired that her father, Robert Then, take custody of Breaunna as soon as possible so that Breaunna would not be in foster care for a prolonged period of time. The sole reason Ms. Then did not pursue reunification with Breaunna Newman was because she knew that her father, Robert Then, was willing and capable of taking immediate custody of Breaunna Newman.

5. On May 8. 1996, Robert Then, the grandfather of Breaunna Newman, filed a Motion to intervene through his Counsel Caroline Gardiner. This was opposed by the State and thus began a series of bizarre actions by DHS that has delayed and frustrated the reunification efforts between Robert Then and his granddaughter, Breaunna Newman. This has included the following:

A) Delays in completion of the Home Study;

B) Failure to forward key documents from Maine to Germany;

C) DHS's stubborn and irrational refusal to allow unsupervised visits between Robert Then and Breaunna Newman during the times he came to Maine to facilitate reunification;

D) DHS's insistence that Mr. Then be allowed only sporadic visits during his visits to Maine to facilitate reunification;

E) A failed effort at intensive reunification, as ordered by this Court, between Robert Then and Breaunna Newman during April of 1998.

6. In fairness to DHS and in addition to the above factors, it

should be noted that the process of reunification in this case has been inherently difficult due to the distance of the parties, and the bureaucracies of the State of Maine, the United States Military and the two countries involved.

7. For over 2 years, from April 1996 until June 1998, Christina Then desired, and actively supported, the reunification of Robert Then and Breaunna Newman. Despite a tremendous amount of time, effort and money spent by Robert Then and his family, to facilitate reunification, the reunification has not taken place and Breaunna still remains in foster care.

8. Since Breaunna was taken into DHS custody in March of 1996 and Christina Then moved to Italy/Germany with her family, Ms. Then has done among other things:

Ms. Then worked for and received her GED;

Ms. Then has taken college courses such as philosophy and english;

Ms. Then has received her drivers license;

Ms. Then has worked in the cafeteria at the Military Base Elementary School;

Ms. Then has been employed as a senior sales associate in the AAFSES (Army and Air Force Store Exchange Services);

Ms. Then has taken and completed parenting classes;

Ms. Then has a fundamental liberty interest in maintaining her familial relationships. Moore v. East Cleveland, 431 U.S. 494 (1974); In Re Scott B., 511 A.2d 450 (Me. 1986).

10. In the past 2 years since Breaunna was taken from her, Ms. Than has matured greatly. She will be 19 years old July 18, 1998. She is not the same immature 16 year old girl who had Breaunna taken away from her 2 1/2 years ago.

11. Ms. Then plans to move to Maine on August 1, 1998 and participate in reunification with her daughter, Breaunna Newman. Ms. Then will have an apartment, job, and transportation so that she can completely dedicate herself to the task of reunification with Breaunna. Ms. Then will do ALL that this Honorable Court and DHS requires of her until reunification with her daughter is completed.

WHEREFORE, Christina Then requests this Honorable Court to amend Par. 5 of the Child Protection Order to pertain to only Gerald Newman as outlined in Par. 2 of this Motion, and require the Department of Human Services to comply with their statutory duties and make reunification efforts between her mother Christina Then and Breaunna Newman.

Dated: June 25, 1998

/s/ James S. Hewes
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